

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1387

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DOUGLAS STEWART,
Defendant-Appellant.

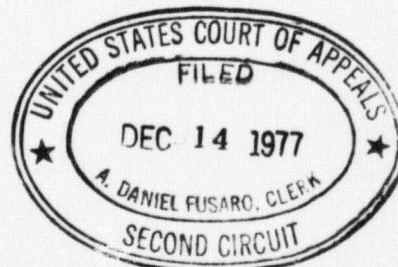
ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

APPENDIX FOR THE APPELLEE

RICHARD J. ARCARA,
United States Attorney,
Western District of New York,
Attorney for Appellee,
502 United States Courthouse,
Buffalo, New York 14202,

JAMES A. FRONK,
Assistant United States Attorney,
of Counsel.

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
716-943-0437, 716-944-2000



B
P/S

PAGINATION AS IN ORIGINAL COPY

INDEX.

	page
Proceedings of Hearing, November 5, 1976.....	1
Index of Witnesses.....	2
Index of Exhibits.....	3
Proceedings of Hearing, November 24, 1976.....	88
Certificate.....	105

TESTIMONY.

Witness for Government:

Burns, Joseph E.

Direct Examination.....	4
Cross Examination.....	9
Re-direct Examination.....	44

Witness for Government in Rebuttal:

Peterson, Kenneth B.

Direct Examination.....	97
Cross Examination.....	101

Witnesses for Defendants:

Stewart, Douglas

Direct Examination.....	47
Cross Examination.....	64
Re-direct Examination.....	77,89

Stewart, Orveta

Direct Examination.....	90
Cross Examination.....	96

EXHIBITS.

(Not Printed.)

Government's Exhibits:

Exhibit 1--Advice of Rights Form.

Exhibit 2--Statement of Douglas Stewart.



Proceedings of Hearing, November 5, 1976.

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 * * * * *

4 THE UNITED STATES

5 -v-

6 DOUGLAS STEWART and ROBERT STEWART,
7 Defendants.
8 * * * * *

CRIMINAL DOCKET
NO. 1976-87



9
10 Proceedings of Hearing on Motion to Suppress,
11 held before the HON. JOHN T. CURTIN, United States District
12 Judge, in Part I, United States Court House, Buffalo, New
13 York, commencing on November 5, 1976.
14

15 APPEARANCES:

RICHARD J. ARCARA, United States Attorney,
by ROGER P. WILLIAMS, Assistant United
States Attorney.

17 GARY S. BITTNER, Esq., Attorney for the
18 Defendant DOUGLAS STEWART.

19 CHARLES P. BRIDGE, Esq., Attorney for the
20 Defendant ROBERT STEWART.
21
22
23
24
25

Index of Witnesses.GOVERNMENT WITNESS:

	<u>DR.</u>	<u>CR.</u>	<u>RDR.</u>	<u>RCR.</u>
Joseph E. Burns By Mr. Bittner	5	9	44	
Kenneth B. Peterson (In Rebuttal) By Mr. Bittner	97		101	

DEFENSE WITNESS:

Douglas Stewart By Mr. Bittner	47	64	77 89	
Orvetta Stewart By Mr. Bittner	90	96		

Index of Exhibits.GOVERNMENT EXHIBITIDEN.EVID.

- | | | | |
|---|------------------------------|--|--|
| 1 | Advice of Rights Form | | |
| 2 | Statement of Douglas Stewart | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

J. E. Burns, for Government, Direct.

1 PROCEEDINGS: November 5, 1976, 2:15 p.m.

2 APPEARANCES: As before noted.

3 (Defendants present.)

4

5 THE COURT: In United States against Stewart,
6 is the Government ready?

7 MR. WILLIAMS: The Government is ready, your
8 Honor.

9 THE COURT: What number is this?

10 MR. WILLIAMS: This is Criminal Number 1976-87.

11 THE COURT: Mr. Bridge, Mr. Bittner, are you
12 ready?

13 MR. BRIDGE: That is correct, your Honor. We
14 are ready.

15 THE COURT: And the defendants are here in
16 court?

17 MR. BITTNER: The defendants are present.

18 THE COURT: Very well, Mr. Williams.

19 MR. WILLIAMS: Thank you. Joseph Burns.

20

21 J O S E P H E. B U R N S (68 Court Street, Buffalo, New
22 York), a witness called by and in behalf of the Government,
23 having been first duly sworn, was examined and testified as
24 follows:

25

J. E. Burns, for Government, Direct.

1 DIRECT EXAMINATION BY MR. WILLIAMS:

2 Q. Mr. Burns, you are a Drug Enforcement Administration
3 Agent, are you not?

4 A. Yes, sir.

5 Q. During the summer of 1975 were you working here in the
6 Buffalo, New York office?

7 A. Yes, I was.

8 Q. All right, sir. Sometime during the summer of 1975
9 did you or fellow agents have an occasion to arrest one
10 Douglas Stewart?

11 A. Yes, sir, we did.

12 Q. And when was that, sir?

13 A. I believe the date was July 31, 1975.

14 Q. Did you have occasion to see Douglas Stewart at anytime
15 that day?

16 A. Yes, sir, I did.

17 Q. And where and when was that?

18 A. In the Drug Enforcement Administration Office on the
19 first floor of this building in the early evening of
20 that date.

21 Q. At about what time, do you recall?

22 A. Approximately 9:00 p.m.

23 Q. Did you have any conversation with him at that time?

24 A. Yes, sir, I did.

25 Q. What, if anything, did you say and what, if anything,

J. E. Burns, for Government, Direct.

1 did he say?

2 A. Mr. Stewart was asked if he would cooperate with the
3 Government after having been advised of his rights.

4 MR. BITTNER: Your Honor, may I interrupt? May
5 I inquire as to who asked Mr. Stewart
6 something. You say he was asked.

7 THE COURT: Will you relate the conversation as
8 closely as you can remember, please?
9 You say he was asked and Mr. Bittner's
10 question is who said what. Did you
11 speak or did another agent speak or who
12 spoke?

13 THE WITNESS: I spoke and Agent McDonald was
14 also present and he also spoke with
15 Mr. Stewart.

16
17 BY MR. WILLIAMS:

18 Q. All right. Fine. What, if anything, did you say at
19 that time, Mr. Burns?

20 A. I presented Mr. Stewart with a DEA Form 13 which I read
21 to him advising him of his rights and he stated that
22 he understood it.

23 MR. BITTNER: Your Honor, I object to the conclu-
24 sion.

25 THE COURT: Overruled.

J. E. Burns, for Government, Direct.

1 BY MR. WILLIAMS:

2 Q. Go ahead.

3 A. I then asked Mr. Stewart if he would sign the form, the
4 waiver of his rights, and he did and then I proceeded
5 to ask him about the arrest, the investigation relating
6 to narcotics, and he expounded on this. I took notes
7 and then reduced this to writing and I asked him to
8 read the statement and if it was correct to sign it
9 and he did.

10 Q. Now, let me show you what is marked as Exhibit Number 1
11 for purposes of this hearing. Do you recognize that?

12 A. Yes, sir, I do.

13 Q. And what is that?

14 A. That is a statement of rights and his waiver.

15 Q. All right, and you testified you read from that?

16 A. Yes, sir, I did.

17 Q. What, if anything, did you do with it at that point?

18 A. I had him read it and asked him if he understood it.

19 Q. And what, if anything, did he say to you?

20 A. He said he understood it. I asked him to fill in the
21 blank area and to sign it.

22 Q. He filled in the --

23 A. The times, the date.

24 Q. The portion you are referring to here under the waiver?

25 A. Yes, sir.

J. E. Burns, for Government, Direct.

- 1 Q. What is in hand was written by Mr. Stewart?
- 2 A. Yes, sir.
- 3 Q. And does his signature appear on that?
- 4 A. Yes, sir, it does.
- 5 Q. Witnessed by whom?
- 6 A. Charles Wilson, a police officer, Buffalo Police
- 7 Department, who was assigned to our Task Force, the DEA
- 8 Task Force.
- 9 Q. And who else?
- 10 A. The statement?
- 11 Q. The waiver you have in your hand there.
- 12 A. The waiver, my own signature.
- 13 Q. All right, sir. Now, I show you what is marked as
- 14 Government Exhibit Number 2. Do you recognize that?
- 15 A. Yes, sir, I do.
- 16 Q. All right, sir. What is that?
- 17 A. This is a three-page statement from Mr. Stewart.
- 18 Q. Is that an original?
- 19 A. No, sir, it is not.
- 20 Q. Do you recognize that as a copy of the original?
- 21 A. Yes, sir.
- 22 Q. All right, sir, and does his signature or initials
- 23 appear anywhere thereon?
- 24 A. Each page is initialed by Mr. Stewart and the original
- 25 is signed by him, witnessed by myself and Agent McDonald.

J. E. Burns, for Government, Cross.

1 Q. All right, sir, and at anytime did you ever threaten him
2 in any way?

3 A. No, sir.

4 Q. Or make any promises to him?

5 A. No, sir.

6 MR. WILLIAMS: I have no more questions.

7

8 CROSS EXAMINATION BY MR. BITTNER:

9 Q. Agent Burns, did you use any notes today in refreshing
10 your recollection?

11 A. I read a copy of the statement today, yes.

12 Q. All right. Did you look at any forms normally kept by
13 your office?

14 A. I reviewed the case file.

15 Q. The case file, all right. Did you specifically look at
16 any statements or notes that you made attendant upon
17 that statement which is Government's Exhibit 2 and the
18 waiver which is Government's Exhibit 1?

19 A. No, sir. I read the copy of the statement and I looked
20 at the waiver signature.

21 Q. All right. Do you mean Mr. Stewart's signature on the
22 waiver?

23 A. The form itself is in the file.

24 Q. Okay. Did you, in fact, make notes?

25 A. At the time I took the statement?

J. E. Burns, for Government, Cross.

- 1 Q. At the time you took the statement.
- 2 A. Yes, I did.
- 3 Q. I am referring to DEA 6 Form, is that correct?
- 4 A. No, sir. The statement was prepared from notes I took
- 5 during the interview with Mr. Stewart.
- 6 Q. I am referring to notes which you made out for your
- 7 own purposes.
- 8 A. For today?
- 9 Q. For testifying at some subsequent time or for whatever,
- 10 for your record keeping purposes.
- 11 A. No, sir, I have no notes.
- 12 Q. There were no Forms 6 made out at the time, referring to
- 13 the confession contained in Exhibit 2 then, is that
- 14 your testimony?
- 15 A. I did not make any. I assume other agents have written
- 16 DEA 6's on the report.
- 17 Q. I am talking about the interrogation and the subsequent
- 18 confession.
- 19 A. I did not write a DEA 6, no, sir.
- 20 Q. All right. Other agents did, you are assuming?
- 21 A. I am assuming they did, yes, sir.
- 22 Q. All right. Now, you testified that you saw the
- 23 defendant Douglas Stewart at about 9:00 o'clock on that
- 24 date, the 31st of July. Did you see him any earlier
- 25 that day?

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

J. E. Burns, for Government, Cross.

1 A. Yes, sir, during our surveillance.

2 Q. All right, and where did the surveillance take place?

3 A. The first recollection I have of seeing Mr. Stewart
4 that day was at the bus terminal on Main Street.

5 Q. All right, and who was he with at that time?

6 A. I do not recall. I believe he met another individual.

7 Q. Who was the other individual?

8 A. I don't recall.

9 Q. Are you saying that you were surveilling Douglas Stewart?

10 What was the purpose of surveilling Douglas Stewart?

11 A. It was an investigation of narcotics traffic going on.
12 I was one of several people who was assigned to follow
13 Mr. Stewart.

14 Q. All right. Who were the other people involved?

15 MR. WILLIAMS: Excuse me, your Honor. I haven't
16 made objection at this point but all we
17 are concerned with is about the taking
18 of the statement and what Mr. Burns did
19 earlier in the day or the previous days,
20 I don't see what relevance it has to
21 the purposes of this hearing.

22 THE COURT: Mr. Bittner, what relevance does
23 that have?

24 MR. BITTNER: Your Honor, Mr. Stewart was
25 arrested fairly early in the day, some

J. E. Burns, for Government, Cross.

1 four hours prior to his signing the
2 waiver and I think that the earlier
3 material that I am seeking to get from
4 the witness would be of benefit in deter-
5 mining whether any kind of coercion was
6 done on Mr. Stewart simply in terms of
7 time.

8 THE COURT:

How does that follow; can you
9 explain that?

10 MR. BITTNER:

Well, Mr. Stewart was kept in
11 custody for some four hours and interro-
12 gated and finally this statement was
13 made, so we feel it would be relevant.
14 I want, - your Honor, I won't go into
15 it in too much greater depth but I would
16 like to get to the point of the arrest.
17 I think that is definitely relevant.

18 THE COURT:

All right.

19
20 BY MR. BITTNER:

21 Q. So your testimony, Agent Burns, is that you were surveil-
22 ling Douglas Stewart? In other words he was a subject,
23 was he not, you were attempting to determine whether he
24 was involved in any criminal activities, is that correct?

25 A. Yes, sir.

J. E. Burns, for Government, Cross.

1 Q. All right, and there were other agents involved in that
2 surveillance?

3 A. Yes.

4 Q. And can you name them?

5 A. I believe the entire office. I would have to, - I know
6 Agent McDonald.

7 THE COURT: Just give us the names of those
8 who you are sure of.

9 THE WITNESS: Agent William --

10 THE COURT: The approximate number of the
11 others.

12 THE WITNESS: Agent William T. McDonald, Detective
13 Charles Wilson, Detective Robert McCarthy,
14 Agent Kenneth Petersen, Group Supervisor
15 Paul Teresi, Agent John Brown, Agent
16 Dave Lucier, and I believe there were
17 others, your Honor, but I am not positive
18 of the others.

19

20 BY MR. BITTNER:

21 Q. All right. From the bus terminal on Main Street, where
22 did Mr. Stewart proceed?

23 A. I don't recall exactly. I didn't prepare for that today.

24 Q. Where did you effect an arrest of Mr. Stewart?

25 A. I was not present at the arrest scene but I believe it

J. E. Burns, for Government, Cross.

- 1 was at the corner of Hertel and Delaware Avenue.
- 2 Q. What is the source of your belief?
- 3 A. I recall the case.
- 4 Q. Well now, you said you weren't present.
- 5 A. I was not physically present at the scene at Delaware
- 6 and Hertel Avenue. I was in the vicinity.
- 7 Q. You were in the vicinity of Delaware and Hertel?
- 8 A. Yes, sir.
- 9 Q. Had you followed Douglas Stewart there?
- 10 A. I cannot recall whether I followed him there or was
- 11 radioed to come to that area.
- 12 Q. What time of the day are we talking about?
- 13 A. I believe the arrest took place at approximately 5:30
- 14 in the afternoon.
- 15 Q. All right. Your duties were to surveil Douglas Stewart,
- 16 to keep an eye on him, is that correct?
- 17 A. Yes, sir.
- 18 Q. All right. Are you testifying then that you did not
- 19 keep an eye on him but you lost track of him sometime
- 20 between the stop on Main Street at the bus terminal and
- 21 his arrival at the corner of Delaware and Hertel?
- 22 A. No, sir. I believe I was told to lay back. In other
- 23 words, the car that I was using to follow him would have
- 24 been --
- 25 Q. I don't want you to testify to what you believe. I want

J. E. Burns, for Government, Cross.

1 you to testify to what you were told or what you saw or
2 heard.

3 A. To the best of my recollection I was asked to stay out
4 of the area with the car I was using for surveillance
5 until the arrest was effected.

6 Q. You in other words intended to arrest Mr. Stewart on
7 that day, is that correct? You said until the arrest
8 was effected, is that your testimony?

9 A. Persons in our office intended to arrest him. I was not
10 the individual who was to effect the arrest.

11 Q. And did you have a warrant for his arrest?

12 A. I did not have a warrant for his arrest, no, sir.

13 Q. Do you know whether or not a warrant for his arrest
14 existed at that time?

15 A. I don't know for sure.

16 Q. Now, normally before you effect an arrest of a suspect
17 you have a surveillance meeting and have a discussion
18 back at your office, is that correct?

19 A. Yes, sir.

20 Q. Did you have such a meeting on the day in question here?

21 A. I believe there was a meeting, yes.

22 Q. Was there a discussion as to whether there was an
23 arrest warrant or not?

24 A. I do not recall.

25 Q. At any rate, you intended to arrest Mr. Stewart on that

J. E. Burns, for Government, Cross.

1 day, is that correct?

2 A. To the best of my recollection I believe Mr. Stewart
3 was to be arrested that day but I am not sure.

4 Q. Well now, you said that you were told to lay back while
5 the arrest was effected, that was your testimony?

6 A. That's correct.

7 Q. So you had an understanding that he was going to be
8 arrested, don't you?

9 A. At that time a decision was made by the Group Supervisor
10 to arrest Mr. Stewart.

11 Q. Is that your testimony that it was a decision made on
12 the street then?

13 A. To the best of my recollection, yes.

14 Q. All right, and what was the information or specifically
15 what activity had been observed which caused, - was it
16 Mr. Teresi we are talking about, Group Supervisor?

17 A. I believe it was his decision.

18 Q. All right. What information had been observed which
19 caused Supervisor Teresi to make that decision to
20 arrest Douglas Stewart?

21 A. I believe that an observation was made of Mr. Stewart
22 meeting ---

23 Q. Now, I am not asking for your belief. I want your
24 recollection as to what conversation took place or
25 what you saw or what you heard.

J. E. Burns, for Government, Cross.

- 1 A. To the best of my recollection, Mr. Stewart met with a
2 known drug dealer on that date and a package exchanged
3 hands and was observed by agents of our office.
- 4 Q. Do you know the name of that drug dealer?
- 5 A. I believe again to the best of my recollection there was
6 a Michael Agro and a Mr. Castle, Stephen Castle, I
7 believe.
- 8 Q. Were both of these gentlemen known drug dealers at that
9 time?
- 10 A. Again to the best of my recollection they were.
- 11 Q. All right, and where was this package exchanged and
12 between whom?
- 13 A. I do not recall.
- 14 Q. Was there more than one package?
- 15 A. Again I don't recall.
- 16 Q. Where was it exchanged?
- 17 A. I would have to review the case file and the notes.
18 I don't recall at this time. The only preparation I
19 made for today was the statement.
- 20 Q. All right. Now, where were you at the time when
21 Douglas Stewart was arrested?
- 22 A. To the best of my recollection I was in the vicinity
23 of Hertel and Delaware. My exact location I cannot
24 recall.
- 25 Q. All right. Where does Stephen Castle live?

J. E. Burns, for Government, Cross.

1 A. On Hertel Avenue near the intersection of Delaware.

2 Q. All right, and you went to Stephen Castle's house on
3 that day, did you not?

4 A. No, sir.

5 Q. At no time during that day were you at Stephen Castle's
6 house?

7 A. No, sir.

8 Q. All right. Were you present when Stephen Castle was
9 arrested?

10 A. No, sir.

11 Q. You were not?

12 A. I was in the vicinity. I was not present.

13 Q. Where were you in the vicinity?

14 A. Again within a few blocks.

15 MR. WILLIAMS: Again, your Honor, the same kind of
16 objection. I don't know what all this
17 has to do with the relevancy of the
18 circumstances surrounding the taking of
19 a statement.

20 THE COURT: What does it have to do with it,
21 Mr. Bittner?

22 MR. BITTNER: I will limit it, your Honor.

23 THE COURT: Forget about limiting.

24 MR. BITTNER: All right.

25 THE COURT: Let us just go on to something else.

J. E. Burns, for Government, Cross.

1 BY MR. BITTNER:

2 Q. All right, so let's quickly summarize your testimony
3 then, Agent Burns. You first saw the defendant at what
4 time during that day?

5 A. Approximately 9:00 p.m. First during the day?

6 Q. During the day, yes.

7 A. I don't recall. I think it was in the early afternoon.

8 Q. Early afternoon, and you surveilled him for some time?

9 A. Yes, sir.

10 Q. And then you were told to lay back and you lost him?

11 A. That's correct.

12 Q. Were you told to lay back so far as not to be able to
13 see him?

14 A. Yes, sir, to the best of my recollection another car
15 took over the eyeball, as we call it.

16 Q. All right, so you later saw him at 9:00 o'clock in the
17 evening?

18 A. Yes, sir.

19 Q. And how long had he been at the DEA headquarters at
20 that point, do you know?

21 A. I believe he was probably brought in about 7:00 p.m.
22 I am not sure.

23 Q. Who brought him in, do you know?

24 A. No, sir, I don't.

25 Q. All right, and who processed him down at the DEA offices?

J. E. Burns, for Government, Cross.

- 1 A. I don't know for sure. I assume John Brown.
- 2 Q. Why do you assume John Brown?
- 3 A. He usually take the photographs and fingerprints.
- 4 Q. It wasn't you then, sir, who processed Mr. Stewart, was
- 5 it?
- 6 A. No, sir.
- 7 Q. All right. Do you know if, of your own knowledge,
- 8 whether Mr. Stewart was interrogated prior to your
- 9 seeing him at 9:00 O'clock?
- 10 A. No, sir, I don't.
- 11 Q. You don't. All right. Who else was present at 9:00
- 12 o'clock when you saw Mr. Stewart?
- 13 A. Detective Wilson from the Buffalo Police Department and
- 14 Agent McDonald from DEA.
- 15 Q. All right. Now, describe the room where you were at
- 16 9:00 o'clock on the 31st of July 1975?
- 17 A. It is a large conference room on the first floor of
- 18 this building.
- 19 Q. All right, and was anyone else in the room besides the
- 20 defendant Douglas Stewart, Detective Wilson, Agent
- 21 McDonald and yourself?
- 22 A. Not that I can recall.
- 23 Q. All right. Was Stephen Castle in the room?
- 24 A. I do not believe so.
- 25 Q. Now, I don't want your belief. I want your statement as

J. E. Burns, for Government, Cross.

- 1 to what you saw and what you heard, okay. Was Stephen
2 Castle present in that room where this interrogation
3 took place?
- 4 A. At the time I interviewed Mr. Stewart, Stephen Castle
5 was not present.
- 6 Q. Was Castle in custody at that time?
- 7 A. I believe he was, yes.
- 8 Q. I don't want your belief. I wish you would refrain
9 from using that word. I want to know what you saw and
10 what you heard.
- 11 A. Mr. Castle was definitely in our office.
- 12 Q. Did you see him there?
- 13 A. Yes, I did.
- 14 Q. All right. Where was he at that time?
- 15 A. At the time of the interview?
- 16 Q. Yes.
- 17 A. I do not know. I saw him.
- 18 Q. Let's back up. At 9:00 o'clock p.m. where was Stephen
19 Castle?
- 20 A. I do not know.
- 21 Q. All right, and do you know the names of the agents
22 with whom Douglas Stewart had been prior to your seeing
23 him at 9:00 o'clock?
- 24 A. No, sir.
- 25 Q. You have no knowledge of that, all right. At 9:00 o'clock

J. E. Burns, for Government, Cross.

- 1 you came in the offices and began speaking with Douglas
2 Stewart. I would like you to state for the Court, please,
3 exactly what your words to him and what his answers
4 were to you?
- 5 A. I advised Mr. Stewart of his rights from this DEA Form
6 in front of me. I read the --
- 7 Q. Just a second, Officer. When you say you advised him
8 of his rights I would like you to use the words that
9 you used at that time. You certainly didn't say to
10 him "I advise you of your rights", now, did you?
- 11 A. I read from the form.
- 12 Q. All right, and is that Exhibit 1?
- 13 A. Yes, sir, it is.
- 14 Q. All right. Did you read through the entire form without
15 stopping?
- 16 A. I believe I paused at certain points in the form and
17 asked him if he understood.
- 18 Q. Would you indicate where you stopped and indicated or
19 asked him, rather, if he understood?
- 20 A. Do you want me to indicate now?
- 21 Q. Yes, please.
- 22 A. I can't recall exactly the places I stopped.
- 23 Q. How can you recall then that you did in fact stop?
- 24 A. When I read the rights as a matter of course I stop at
25 certain points and ask the individual.

J. E. Burns, for Government, Cross.

1 Q. In other words, Agent Burns, what you are testifying to
2 is that you don't recall the actual incident in which
3 you read that statement to Douglas Stewart? What you
4 are testifying from is what you do out of habit, isn't
5 that correct?

6 A. I read the form to an individual.

7 Q. No. I want you to answer my question. Isn't it true
8 you are testifying from what you do out of habit normally?

9 A. No, sir. I don't have a habit of stopping at one
10 specific point with every individual.

11 Q. Maybe I am not making myself clear. What I am saying
12 to you is that you don't understand or you don't recall,
13 do you, actually having read the statement to Douglas
14 Stewart? What you are saying here is what you do
15 normally, okay? You normally pause, is that correct?

16 MR. WILLIAMS: I am objecting to this.

17 THE COURT: There are about four questions
18 here. Ask one question and let the
19 witness answer. You do not let the
20 witness answer the question. When he
21 begins to answer in a way you do not
22 like, you stop him. Ask the question
23 and let the witness answer the question.
24 Next question. Put a new question.
25

J. E. Burns, for Government, Cross.

1 BY MR. BITTNER:

2 Q. All right. Agent Burns, do you recall the actual
3 incident at 9:01 p.m. on July 31, 1975 in which you
4 allegedly read the substance of Exhibit 1 to the
5 defendant Douglas Stewart?

6 A. Yes, sir, I do.

7 Q. You do recall that?

8 A. Yes, sir.

9 Q. All right. Do you recall it completely?

10 A. I recall reading him the statement.

11 Q. All right. Do you recall pausing during the reading
12 of that statement?

13 A. I recall pausing during certain portions of the statement.

14 Q. When did you pause?

15 A. I do not know exactly after which sentences I paused.
16 They are not marked.

17 Q. If you recall reading the statement and you recall
18 pausing, why don't you recall where you paused?

19 A. I have no notation.

20 MR. WILLIAMS: I object to the question.

21 THE COURT: I will sustain that. I will sustain
22 the objection. That is argumentative.

23
24 BY MR. BITTNER:

25 Q. Did you pause in the middle of a sentence?

J. E. Burns, for Government, Cross.

1 A. I do not recall exactly where I paused while reading
2 the statement.

3 Q. When you paused what did you do, what did you say?

4 A. I asked Mr. Stewart if he understood what I had said
5 to him.

6 Q. And did Mr. Stewart answer you?

7 A. Yes, sir, he did.

8 Q. And what was his answer?

9 A. "Yes, I understand".

10 Q. How many times did you pause?

11 A. From experience I would say --

12 Q. Now --

13 THE COURT: Let him answer the question.

14 THE WITNESS: From experience I would say four or
15 five times.

16 THE COURT: What do you remember about this
17 particular time? Can you remember on
18 this particular time how many times you
19 paused?

20 THE WITNESS: No, sir, I cannot.

21 THE COURT: All right. Next question. Let us
22 get to something besides pauses.
23

24 BY MR. BITTNER:

25 Q. All right. Then what did you do?

J. E. Burns, for Government, Cross.

- 1 A. I gave the form to Mr. Stewart and asked him to read it.
- 2 Q. All right, and did he do that?
- 3 A. Yes, sir, he did.
- 4 Q. He looked at it, in other words. All right. Now, were
- 5 any items filled out on the waiver portion of the form?
- 6 A. Yes, sir.
- 7 Q. All right, and who filled those out?
- 8 A. I believe Mr. Stewart.
- 9 Q. Now, I don't want your belief, sir.
- 10 A. It is not my handwriting. Detective Wilson was present.
- 11 I do not recall exactly who filled in the figures.
- 12 Q. Then you don't have a belief as to that, that issue,
- 13 do you?
- 14 A. The figures that are filled in are not my writing.
- 15 Q. There were other people present in the room?
- 16 A. That's correct.
- 17 Q. It could have been filled in by any of them, is that
- 18 correct?
- 19 A. Yes, sir.
- 20 Q. So you don't have a recollection as to who filled in
- 21 that statement, do you?
- 22 A. No, sir.
- 23 Q. All right. Now, at the time when Douglas Stewart was
- 24 asked to make the statement, sign the waiver, was anyone
- 25 else discussing any matters with Mr. Stewart?

H. T. Noel & E. F. Kniskly

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

J. E. Burns, for Government, Cross.

1 A. Not to my knowledge.

2 Q. All right. What were Detectives Wilson and McDonald
3 doing at that time?

4 A. They were present in the room. I don't recall exactly
5 what they were doing.

6 Q. Were they standing at or near Mr. Stewart at that time?

7 A. I don't recall where they were, whether they were
8 sitting or standing.

9 Q. How far away was Mr. Wilson, Detective Wilson from
10 Douglas Stewart at 9:01 p.m. on that date?

11 A. I do not know.

12 Q. Was he at the other side of the room.

13 A. I don't know where Detective Wilson was.

14 MR. WILLIAMS: Your Honor, he has answered the
15 question he doesn't know where they were
16 in the room, so to go on where each
17 individual agent was standing is the
18 same.

19 THE COURT: I will sustain the objection. Next
20 question.

21

22 BY MR. BITTNER:

23 Q. You were saying, - may I inquire were you saying you
24 don't recall where they were or you don't know where
25 they were?

J. E. Burns, for Government, Cross.

- 1 A. I don't recall where they were.
- 2 Q. Were you looking at them at that time, do you recall?
- 3 A. I don't recall whether I was looking at Mr. Stewart or
- 4 Mr. Wilson or Agent McDonald.
- 5 Q. Did Agent McDonald come up to, - I presume Mr. Stewart
- 6 was sitting at that time, is that not correct?
- 7 A. I believe he was, yes.
- 8 Q. All right. Were you sitting also?
- 9 A. Yes, sir.
- 10 Q. Were you at a typewriter?
- 11 A. No, sir.
- 12 Q. All right. Did Agent or Detective Wilson walk up to
- 13 Mr. Stewart at any time during this waiver?
- 14 A. I don't know.
- 15 Q. All right. Did Mr. or Detective Wilson read anything
- 16 to Mr. Stewart?
- 17 A. Not to my recollection.
- 18 Q. In other words, you were the only person who read any-
- 19 thing to Mr. Stewart?
- 20 A. Yes.
- 21 Q. All right. You were the only one who had any conversa-
- 22 tion with Mr. Stewart?
- 23 A. No, sir.
- 24 Q. Well, I asked you before and you said there were no
- 25 other conversations. Who else spoke to Mr. Stewart?

J. E. Burns, for Government, Cross.

29

1 A. During the interview Agent McDonald also spoke to
2 Mr. Stewart about the case.

3 Q. We are talking about the waiver at this time?

4 A. Excuse me. I misunderstood. As far as the waiver goes
5 the conversation was between myself and Mr. Stewart.

6 Q. There were no other parties conversing with Mr. Stewart
7 at that time?

8 A. Not to my knowledge.

9 Q. All right. You were right there and you would have
10 heard them if there had been conversations, isn't that
11 correct?

12 A. In relation to the statement, yes, sir.

13 Q. In relation to the waiver now?

14 A. That's correct, in relation to the waiver.

15 Q. All right. Did you make any representations to Mr.
16 Stewart in order to induce him to sign that statement?
17 Did you make any statements to him about --

18 A. I advised Mr. Stewart who I was and what my capacity
19 was.

20 Q. All right. Did you ask him to make a statement?

21 A. Yes, sir.

22 Q. And did you give him any reason for making a statement
23 to you?

24 A. I advised Mr. Stewart that any cooperation he would give
25 to the Drug Enforcement Administration would be brought

J. E. Burns, for Government, Cross.

1 to the attention of the Court.

2 Q. All right, and when did you make that statement to him?

3 A. After I had read him his rights.

4 Q. After you read him his rights?

5 A. Yes, sir.

6 Q. All right. Would that be before or after you asked him
7 to sign the statement, the waiver, that is?

8 A. I don't recall the chronological order, whether Mr.
9 Stewart had already signed the statement or not.

10 Q. All right. What else did you say to him regarding
11 cooperation with the court?

12 A. To the best of my recollection, that was the total
13 reference.

14 Q. All right. Was any discussion had between you and
15 Mr. Stewart regarding possible penalties for the offense
16 with which he was charged?

17 A. No, sir.

18 Q. There was no discussion at all of possible penalties?

19 A. Not by myself, no, sir.

20 Q. Was there any discussion by anybody with regard to
21 possible penalty?

22 A. I don't recall what the other people said to Mr. Stewart.

23 Q. Agent Burns, you have already testified here this
24 afternoon that there were no other conversations prior
25 to the signing of the waiver between the other persons --

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 MR. WILLIAMS:

I object to the question. The
2 previous question was asked and he said
3 Agent McDonald was talking.

4 THE COURT:

Ask another question. That is
5 argumentative. It is up to me to decide
6 whether there was or there was not.
7

8 BY MR. BITTNER:

9 Q. All right, so there may have been a discussion regarding
10 penalties which might be imposed on Mr. Stewart?

11 A. There was none by myself. I don't know what the other
12 people said to Mr. Stewart.

13 Q. Officer, you testified that you heard or that you were
14 right at the same table with the defendant. You would,
15 therefore, have heard any other conversations which
16 took place between the other agents and the defendant,
17 is that correct?

18 A. Yes, sir, but I do not recall the conversations.

19 Q. You don't recall those conversations?

20 A. Other than Agent McDonald asking the specific questions
21 about the drug operation I do not recall.

22 Q. Other than Agent McDonald asking specific questions
23 about the drug operation, now, what questions did he
24 ask?

25 A. He asked Mr. Stewart where the narcotics came from; who

J. E. Burns, for Government, Cross.

1 he brought them to; how they were transported to
2 Buffalo, New York. I also asked Mr. Stewart similar
3 questions.

4 Q. Now, how they were brought to Buffalo, New York?

5 A. Yes, sir.

6 Q. What made you believe that Mr. Stewart might have
7 information as to those questions?

8 MR. WILLIAMS: I object to the form of the ques-
9 tion.

10 THE COURT: Overruled.

11
12 BY MR. BITTNER:

13 Q. You have to answer.

14 A. Would you repeat the question?

15 Q. All right. What information did you have that led you
16 to believe that Douglas Stewart had the answer to those
17 questions that Agent McDonald asked him?

18 A. The drug involved was heroin which is not manufactured
19 in Buffalo, New York and information that had been
20 obtained by Agent McDonald during the investigation
21 indicated that Mr. Stewart had gone to another city,
22 I believe Washington, D.C., at some time and it was
23 suspect that he brought back the drugs from this city.

24 Q. All right, and you had information as to that, as to
25 those facts at the time of the arrest here at 9:01 on

J. E. Burns, for Government, Cross.

1 the 31st of July?

2 A. Yes, sir.

3 Q. All right. Was any information gotten from Stephen
4 Castle that night?

5 MR. WILLIAMS: I object to it. I don't know
6 again what relevance this has to the
7 voluntariness of the statement.

8 THE COURT: I do not know either.

9 MR. BITTNER: Your Honor, I think I can connect
10 it up.

11 THE COURT: I will sustain the objection.

12

13 BY MR. BITTNER:

14 Q. All right. Officer, - Agent Burns, where had Agent
15 McDonald been immediately before coming over to Douglas
16 Stewart?

17 THE COURT: I will sustain the objection. What
18 difference does it make where he had
19 been. The question before us is whether
20 or not under the rules if necessary
21 instructions or warnings were given.

22 MR. BITTNER: I think, your Honor, that it goes
23 beyond simply whether the warnings were
24 given. I think it goes to the question
25 of coercion and that could be, of course,

J. E. Burns, for Government, Cross.

1 psychological as well as physical.

2 THE COURT: That coercion do you suspect was
3 visited upon your client here?

4 MR. BITTNER: Well, your Honor, it is my under-
5 standing that at this instance Stephen
6 Castle who had been arrested at that
7 time also was being interrogated and
8 information was being brought from the
9 interrogation of Stephen Castle and
10 brought over here and given to my client.

11 THE COURT: You claim that that is coercion?

12 MR. BITTNER: Some sort of a threat. Well, I
13 think it ties in with the whole situation
14 here, the whole scheme of things here.
15 I think that is one element --

16 THE COURT: I will sustain the objection as to
17 any information coming from Castle.
18 That is not coercion. That is simply
19 common sense. If an agent gets informa-
20 tion about what is happening in another
21 interview, he is certainly entitled to
22 ask whoever he is interrogating about
23 that information.

24 MR. BITTNER: Your Honor, I think it very clearly
25 ties into the statement "We are getting

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

J. E. Burns, for Government, Cross.

cooperation and we are getting other
statements".

THE COURT: I sustain the objection. Go ahead.

BY MR. BITTNER:

Q. All right. Now, Agent McDonald, when you are now
recalling that conversations took place between Agent
McDonald and Mr. Stewart, we have established that, have
we not?

A. Yes, sir.

Q. All right, and Agent McDonald also discussed with Mr.
Stewart various penalties which could attach to these
crimes, did he not?

MR. WILLIAMS: I object. The question has already
been answered. This witness has said
he doesn't recall any such conversations
in his presence.

THE COURT: What further can be brought out?

MR. BITTNER: Your Honor, I don't believe that
the objection should be sustained.

THE COURT: You tell me why it should not be.
Tell me in particular.

MR. BITTNER: All right. Initially, your Honor,
the officer testified that there were
no other conversations at that time which

J. E. Burns, for Government, Cross.

1 took place. He has changed his testimony
2 at this point to say that he recalls
3 conversations between Special Agent
4 McDonald and the defendant regarding
5 where the stuff came from, how it was
6 brought to Buffalo and other matters
7 and I think that clearly we have got a
8 better recollection here and I don't
9 think that the question, although it may
10 have been asked before --

11 THE COURT:

 What does that have to do with
12 warnings?

13 MR. BITTNER:

 Your Honor --

14 THE COURT:

 All right. Put the question and
15 I will permit the agent to answer and we
16 will have a record. Go ahead.

17
18 BY MR. BITTNER:

19 Q. All right. Now, Agent McDonald discussed with the
20 defendant where this prosecution was going to be brought,
21 did he not?

22 A. I don't recall exactly what Agent McDonald said to the
23 defendant in relation to penalties or anything other
24 than how the drug came to Buffalo or the operation that
25 Mr. Stewart was involved in. Agent McDonald specifically

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

J. E. Burns, for Government, Cross.

1 wanted to know how the drugs came to Buffalo, who handled
2 them, where they came from. This conversation I do
3 recall Agent McDonald having. I do not recall Agent
4 McDonald discussing penalties with Mr. Stewart. He may
5 have but I do not recall.

6 Q. All right, he may have. All right. Was any discussion
7 had regarding bail?

8 A. Not by myself.

9 Q. You did not discuss the subject of bail?

10 A. No, sir.

11 Q. All right. At anytime that evening was the subject of
12 bail discussed in your presence?

13 A. Not that I recall.

14 Q. At anytime that night was the subject of testifying
15 against any other persons discussed?

16 A. Yes, it was.

17 Q. And at what point was that discussed?

18 A. During the interview of Mr. Stewart he was asked by
19 myself if he would be willing to testify in behalf of
20 the Government in the case against Mr. Castle or any
21 other persons that were involved.

22 Q. And this took place after he signed the waiver?

23 A. Yes, sir.

24 Q. Is that your testimony?

25 A. Yes, sir.

J. E. Burns, for Government, Cross.

1 Q. All right. Was there any discussion of that subject
2 prior to the time --

3 A. Not by myself, no, sir.

4 Q. You are certain of that?

5 A. I am certain of what I did, yes, sir.

6 Q. All right. There was no discussion that you heard
7 between any other agents and the defendant regarding
8 that subject?

9 A. No, sir. I don't recall any conversation between Mr.
10 Stewart and any other agents.

11 Q. On that subject?

12 A. Other than Agent McDonald and myself and Detective
13 Wilson, - I don't know what conversations Mr. Stewart
14 had with other agents that evening.

15 Q. Well, there were other agents present there later on,
16 weren't there?

17 MR. WILLIAMS: Your Honor, I don't know how many
18 times we can go through all this. It
19 has just been covered so many times.

20 THE COURT: Sustained.

21

22 BY MR. BITTNER:

23 Q. All right. What was, - will you describe Douglas
24 Stewart's physical appearance on that evening?

25 A. Very similar to his physical appearance today.

J. E. Burns, for Government, Cross.

1 Q All right. Did you observe anything about his physical
2 condition at that point?

3 A I didn't note anything out of the ordinary, no, sir.

4 THE COURT: You can ask leading questions,
5 were there any bumps or bruises or
6 anything that you suspect he had.

7 MR. BITTNER: All right.

8 THE COURT: What is the point, Mr. Bittner, of
9 your examination? Do you have informa-
10 tion that your client was, let us say,
11 sick, tired, beaten, - why don't we get
12 to the point.

13
14 BY MR. BITTNER:

15 Q All right. Mr. Burns, did Douglas Stewart appear to you
16 to be sick on that night?

17 A No, sir.

18 Q He did not?

19 A No, sir.

20 Q Did you know Douglas Stewart to be a user of heroin at
21 that time?

22 A I hate to use the term "I believe". He was, - I do
23 recall he had track marks on his arms.

24 Q He had track marks on his arms?

25 A Yes, sir.

J. E. Burns, for Government, Cross.

- 1 Q. All right, and you were surveilling him because of his
2 involvement allegedly in drug traffic?
- 3 A. That's correct.
- 4 Q. And he had track marks. Now, you did not notice anything
5 regarding illness or any disability on his part at that
6 time?
- 7 A. No, sir.
- 8 Q. Specifically was he suffering from what we know commonly
9 as withdrawal symptoms?
- 10 A. Not at all. He did not appear to me to be in withdrawal.
- 11 Q. Do you know what withdrawal symptoms are?
- 12 A. Yes, sir. I have seen them.
- 13 Q. You have seen them. Will you describe them, please?
- 14 A. People look sick, shriveled, have stomach cramps, sweat
15 profusely.
- 16 Q. All right. Mr. Stewart did not appear to be going
17 through any of these?
- 18 A. No, sir, he did not.
- 19 Q. These physical reactions?
- 20 A. No, sir, he did not.
- 21 Q. All right. He had been in custody since 5:30 that
22 day?
- 23 A. That's correct.
- 24 Q. And this was 9:00 o'clock at night?
- 25 A. Yes, sir.

J. E. Burns, for Government, Cross.

- 1 Q. All right. Now, Government's Exhibit 2 was executed
2 at what time, do you know?
- 3 A. I believe 11:00 o'clock was the termination.
- 4 Q. All right, and would you describe Douglas Stewart's
5 physical condition at that time; was he sick then?
- 6 A. No, sir.
- 7 Q. And again he displayed none of the symptoms of withdrawal
8 that you have just stated to the Court?
- 9 A. That's correct, he did not.
- 10 Q. In other words, he appeared to you to be in complete
11 control of his faculties?
- 12 A. Yes, sir.
- 13 Q. All right. Now, after Mr. Stewart signed the waiver
14 you interrogated him, is that correct?
- 15 A. I interviewed him, yes, sir.
- 16 Q. All right, and where did that interview take place?
- 17 A. In the conference room on the first floor of this
18 building in the DEA office.
- 19 Q. Was it in the same conference room in which the waiver
20 statement was signed?
- 21 A. Yes, sir.
- 22 Q. In other words, he was not moved?
- 23 A. No, sir.
- 24 Q. To a different location or a different room?
- 25 A. No, he was not moved.

J. E. Burns, for Government, Cross.

- 1 Q. He was not moved, and who was present at the time of
2 his interview?
- 3 A. Agent McDonald, myself and Detective Wilson, I believe,
4 was in and out of the room at least on one occasion.
- 5 Q. Okay. Was that Detective Wilson in and out of the room?
- 6 A. Yes, sir.
- 7 Q. All right. Who else was present?
- 8 A. At the time of the interview I don't recall anyone else
9 being present.
- 10 Q. Was Stephen Castle in the room at that time?
- 11 A. No, sir.
- 12 Q. Was Agent Teresi in the room at any time?
- 13 A. He may have come in and gone out. He was not present
14 during the entire interview.
- 15 Q. Now, how many other people came in and out of the room
16 during the course of the interview?
- 17 A. I don't recall anyone coming in and out of the room
18 during the interview.
- 19 Q. At the end of the interview who was present in the room?
- 20 A. Agent McDonald and myself.
- 21 Q. Was Mr. Stewart left alone at anytime during this inter-
22 view?
- 23 A. Not to my knowledge.
- 24 Q. Was any statement made to Mr. Stewart regarding where
25 these prosecutions, - where the prosecution would be

J. E. Burns, for Government, Cross.

1 commenced?

2 MR. WILLIAMS: I object. The witness has already
3 answered the question.

4 MR. BITTNER: I am saying during the interview,
5 your Honor. Before we were talking
6 about the waiver.

7 THE COURT: Can't you cover both at the same
8 time, Mr. Bittner?

9 MR. BITTNER: I am already through the waiver,
10 your Honor. We are into the interview.

11 THE COURT: Overruled. I cannot understand why
12 the same matter cannot be covered in a
13 more direct fashion, but I guess I
14 cannot change your ways. Overruled.
15 Go ahead, answer the question.

16 THE WITNESS: I did not discuss the prosecution
17 or where it was to be held with Mr.
18 Stewart.

19
20 BY MR. BITTNER:

21 Q. Who did?

22 A. I don't recall anyone.

23 THE COURT: Do you have any information that
24 it was discussed or it was not, Mr.
25 Bittner?

J. E. Burns, for Government. Re-direct.

1 MR. BITTNER: Yes, your Honor.

2 THE COURT: All right, go ahead.

3
4 BY MR. BITTNER:

5 Q. All right, so your testimony is that the interview was
6 conducted in a conference room downstairs?

7 MR. WILLIAMS: Judge, we have gone over this. It
8 has already been testified to at least
9 a half a dozen times that is where the
10 interview took place, that is where the
11 waiver was signed.

12 THE COURT: All right. Next question.

13 MR. BITTNER: I have nothing further.

14 THE COURT: Mr. Bridge, do you have any
15 questions of Mr. Burns?

16 MR. BRIDGE: I have no questions, your Honor.

17
18 REDIRECT EXAMINATION BY MR. WILLIAMS:

19 Q. Just one. Mr. Burns, do you or does anyone from the
20 DEA office make decisions as to whether or not a person
21 is going to be prosecuted?

22 A. No, sir.

23 MR. WILLIAMS: I have no more questions.

24 THE COURT: Mr. Bridge?

25 MR. BRIDGE: No, I have no questions.

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

J. E. Burns, for Government, Re-direct.

- 1 THE COURT: Anything else?
- 2 MR. WILLIAMS: Nothing, your Honor.
- 3 THE COURT: Any evidence at all or testimony?
- 4 MR. BITTNER: Your Honor, I would like an oppor-
- 5 tunity to examine the other officers who
- 6 were present at this interview, at the
- 7 interrogation.
- 8 THE COURT: Are they here, Mr. Williams?
- 9 MR. WILLIAMS: McDonald is in New York City.
- 10 Charles Wilson is with the City of
- 11 Buffalo Police. I have no idea of his
- 12 whereabouts but, your Honor, there has
- 13 been no showing of any kind. I don't
- 14 think as a practical matter that defense
- 15 counsel has met any kind of burden to
- 16 even have this hearing in the first
- 17 instance, but I consented to have it.
- 18 THE COURT: What we can do is we can set a trial
- 19 time and in the meantime we can find out
- 20 why that is required to have the officers
- 21 here. We will have them here at trial
- 22 anyhow, I suppose.
- 23 MR. WILLIAMS: Sure.
- 24 THE COURT: Why should we have the others?
- 25 MR. BITTNER: Pardon, your Honor?

J. E. Burns, for Government, Re-direct.

1 THE COURT:

Why should we have the other officers?

2 MR. BITTNER:

3 Your Honor, the situation here is
4 far more complex than certainly appears
5 by the testimony of Agent Burns. I think
6 that the testimony of the other officers
7 would indicate clearly that Mr. Stewart
8 is more or less a pawn in a game here,
9 that Stephen Castle is really the object
10 of the search and that they told him that
11 statements would not be used against him
12 if he agreed to testify against Castle.

13 THE COURT:

Where do you find that in the
evidence we have before us?

14 MR. BITTNER:

15 I have it from statements from my
16 own client and also another witness
17 present at the time.

18 THE COURT:

19 That does not seem to me enough at
20 the present to require the presence of
21 the other officers, and even so, let us
22 say that Mr. Castle was not charged, what
23 does that have to do with the action
24 against your man?

25 MR. BITTNER:

Your Honor, my client was induced
to make a statement, was told it would
be okay to make a statment so that it

H. T. Neal & E. F. [unclear]

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

D. Stewart, for Defts., Direct.

1 could be used against Castle and he was
2 told it would not be used against him.

3 THE COURT: Mr. Bittner, all I can go on is
4 what I have before me in the sworn
5 testimony. Where in the testimony of
6 Mr. Burns do you find that?

7 MR. BITTNER: Your Honor, I will call my client
8 then.

9 THE COURT: You can call him if you want, but
10 you know if he testifies that under
11 certain rules the information he testifies
12 to may be used against him and furthermore,
13 he may be subject to cross examination.

14 MR. BITTNER: I am aware of that, your Honor.

15 THE COURT: All right, very well.

16

17 * * * * *

18

19 D O U G L A S S T E W A R T (312 Koons Avenue, Buffalo,
20 New York), one of the defendants herein, having been first
21 duly sworn as a witness in his own behalf, was examined and
22 testified as follows:

23

24 DIRECT EXAMINATION BY MR. BITTNER:

25 MR. BITTNER: Your Honor, at this time I ask

D. Stewart, for Defts., Direct.

1 Agent Burns be excluded from the court-
2 room.

3 THE COURT: Mr. Burns.

4
5 BY MR. BITTNER:

6 Q. Mr. Stewart, you are the defendant in this proceeding.
7 You were arrested on July 31st, 1975, is that correct?

8 A. Yes.

9 Q. Was that arrest for charges which are now pending
10 against you here in this court today?

11 A. No.

12 Q. It was not?

13 A. No.

14 Q. All right, and can you tell the Court, please, what the
15 charges were at that time?

16 A. It was possession of a controlled substance, narcotic,
17 heroin.

18 Q. And what was the substance allegedly in your possession
19 at that time?

20 A. It was allegedly heroin.

21 Q. All right. Now, where were you at the time you were
22 arrested?

23 A. In an automobile, a vehicle at the intersection of
24 Delaware and Hertel.

25 Q. All right, and who was with you at that time?

D. Stewart, for Defts., Direct.

1 A. Stephen Castle was the automobile operator.

2 Q. All right. Where had you been immediately prior to
3 that time?

4 A. I just left Mr. Castle's house which is about two doors
5 away, approximately.

6 Q. All right, and how long had you been there?

7 A. I stayed in the house approximately about fifteen,
8 twenty minutes.

9 Q. All right. At the time of the arrest did you have in
10 your possession any heroin?

11 A. No, I didn't have in my possession any heroin, no.

12 Q. Was there supposedly heroin in the car?

13 THE COURT: Just a minute, please. Mr. Stewart,
14 keep your voice up and speak slowly.

15 It is hard to hear in this room.

16 THE WITNESS: No, I didn't have any heroin in my
17 possession at that time.

18
19 BY MR. BITTNER:

20 Q. Now, at the time of the arrest was a substance seized
21 from the car?

22 A. Yes, it was.

23 Q. All right, and it was whose car?

24 A. Stephen Castle's car.

25 Q. Stephen Castle's car. Now, did the agents making the

D. Stewart, for Defts., Direct.

1 arrest, did they tell you they had a search warrant?

2 A. No, they didn't.

3 Q. Did they tell you they had an arrest warrant?

4 A. They said they had an arrest warrant for Mr. Castle but
5 in my case concerning me, I was a bonus. In fact, they
were concerned actually who I was at that time.

7 Q. In other words, as far as they were concerned, you were
8 not involved in the proceeding?

9 A. That's correct

10 Q. Other than being present in the car?

11 A. That's correct.

12 Q. All right. Now, where were you taken immediately after
13 the arrest?

14 A. I was taken back to Stephen Castle's apartment.

15 Q. And what occurred there?

16 A. Well, they took us in the kitchen and handcuffed us in
17 a chair and then they proceeded to search the premises.

18 Q. They searched Stephen Castle's home at that time?

19 A. Yes.

20 Q. All right, and at that time were you interrogated at
21 all?

22 A. No, I wasn't actually interrogated other than comment
23 was made by one of the agents involved that whatever
24 they found in the house which they had found a quantity
25 of substance at that time, that I could be charged with

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

D. Stewart, for Defts., Direct.

1 it and, you know, I asked them how could I be charged
2 with it and he said that I had left the house within
3 a twenty-minute period of time and that was the extent
4 of anything.

5 Q. All right. Now, do you know of your own knowledge
6 whether they found any substances in Stephen Castle's
7 apartment at that time?

8 A. Yes, they did.

9 Q. All right. How long were you there at Stephen Castle's
10 apartment?

11 A. I imagine about two hours.

12 Q. All right, and you were arrested approximately what time?

13 A. Around 5:30, I imagine, somewhere around there.

14 Q. All right. Were you taken someplace then from Stephen
15 Castle's house?

16 A. Yes. I was brought here to the United States Court
17 Building.

18 Q. All right, and where specifically in this building?

19 A. The DEA office.

20 Q. All right, and what occurred then?

21 A. Well, they sat us down, you know, in a large room, you
22 know. I was sitting on, - I imagine at that time it
23 was the right-hand side of the room. Mr. Castle was
24 sitting on the left-hand side of the room and he had
25 in his presence two agents at that time and there was

D. Stewart, for Defts., Direct.

1 two in the area in which I was sitting and at that time
2 they were taking me through the processing of asking
3 my address, where I lived, my name, my age and whatever.

4 Q. All right. Were they recording this information on
5 their sheets there?

6 A. Yes. One officer was at a typewriter at that time.

7 Q. All right. Do you recognize or do you know either of
8 those officers?

9 A. Well, I recognize Mr. Burns, but I didn't, - the officer
10 I recognized that I explained before, - that is what
11 I was trying to explain to you before, was officer, -
12 I know Mr. Petersen was there. He was the arresting
13 officer at that time and another agent at that time,
14 I don't know his name, but he was a tall fellow with
15 gray hair cut close.

16 Q. All right, and those were the officers who were with
17 you initially, is that correct?

18 A. Right.

19 Q. Was Agent Burns with you at that point? Had he come
20 up to you at that point?

21 A. Not to my knowledge, no.

22 THE COURT: You just said that Mr. Burns was
23 there.

24 THE WITNESS: No.

25 THE COURT: I thought you said Burns and

D. Stewart, for Defts., Direct.

Petersen.

THE WITNESS:

No, I said Mr. Petersen and another agent who had kind of gray hair, his hair cut kind of close. I don't know his name.

BY MR. BITTNER:

Q And those were the two officers, Petersen and the other you don't know who were present with you initially at the DEA office?

A. Yes.

Q All right. Now, did you have any conversation with them?

A Well, no more than in the course of the processing one officer commented on the fact that they had a choice about whether, you know, in terms of how they would prosecute, that they could either, - because they were DEA agents or a Task Force and some of the agents were borrowed on loan from the City or the State or whatever, that they could either process through the state court or through the federal court.

Q All right. At that time had you signed any waiver statement?

A. No, I hadn't.

Q All right. Was any discussion had regarding possible penalties attendant upon a state charge?

D. Stewart, for Defts., Direct.

1 A. Yes. He said if it went through state court I would
2 be facing fifteen years. I mean I would be facing life
3 and if it was processed in federal court I would be
4 facing fifteen years, in addition to the fact that they
5 mentioned the fact it could possibly be controlled if
6 it was in federal court.

7 Q. Did you understand what they meant by "control" or did
8 you understand them to mean anything in particular by
9 that word "control"?

10 A. Well, they could influence --

11 MR. WILLIAMS: I object to what he understood
12 them to mean.

13 THE COURT: You just tell us what they said.
14 What did they say to you?

15 THE WITNESS: Well, they told me that they could
16 control it if it was in federal court
17 and like if it was in state court --

18 THE COURT: Mr. Bittner, I will let him testify.
19 What did that mean to you?

20 THE WITNESS: Well, as I said, I was under the
21 impression that they could influence it.

22 THE COURT: You do not claim that is coercion,
23 do you, if I am an officer and I explain
24 to a person I am interviewing, "You know
25 that state court law is punishment thus

H. T. Noel & L. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

D. Stewart, for Defts., Direct.

1 and so; federal court law is punishment
2 thus and so"; do you claim that is
3 coercion, Mr. Bittner?

4 MR. BITTNER: Your Honor, I feel that coupling
5 that with the other circumstances which
6 I hope to bring out in just a moment
7 that it does amount to psychological
8 coercion.

9 THE COURT: I think we all have heard the facts
10 of life and it seems to me that if you
11 tell a person the facts of life that
12 cannot be coercion but I will listen to
13 your question. Go ahead.
14

15 BY MR. BITTNER:

16 Q. Thank you. All right. Mr. Stewart, was any conversation
17 had regarding bail?

18 A. Yes. I was told by one of the agents. Again, I can't
19 recall the agent's name, but I was told that I wouldn't
20 have to worry about the bail situation, they would make
21 arrangements so that the bail situation would be one
22 that I could meet and in addition to that, - maybe I am
23 getting ahead of myself, but when the officer was
24 testifying a few minutes ago, I don't think it was
25 brought out the fact that my wife also happened to be --

D. Stewart, for Defts., Direct.

- 1 Q. We will get to that in a moment All right. A discussion
2 was had before you signed the waiver about bail?
3 A. Yes.
4 Q. Is this correct?
5 A. Yes.
6 Q. All right, and was that said at or about the time when
7 a discussion was had regarding the control?
8 A. Yes.
9 Q. In federal court?
10 A. Yes.
11 Q. All right, and, Mr. Stewart, at the time, - at that
12 time were you addicted to the use of narcotics?
13 A. Yes, I was.
14 Q. All right, and to what narcotic were you addicted?
15 A. Heroin.
16 Q. All right, and would you tell the Court, please, what
17 sort of habit you had? In other words, how much heroin
18 you required per day?
19 A. Approximately a spoon a day.
20 Q. All right. How much had you had at that time?
21 MR. WILLIAMS: Are we talking about now or back
22 then?
23 MR. BITTNER: Then.
24 THE WITNESS: We are speaking about back then.
25 THE COURT: Back then.

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

D. Stewart, for Defts., Direct.

1 THE WITNESS:

At that time I had taken early in
2 the day, probably that morning sometime,
3 and at that time my condition was one
4 of withdrawal.
5

6 BY MR. BITTNER:

7 Q. All right. Would you describe what you mean by
8 "withdrawal"? Would you describe, rather, what you felt
9 at that time?

10 A. Well, I had hot and cold flashes; my eyes was running;
11 I had nausea; some diarrhea, sweating and whatever.

12 Q. All right, and this was at the time when you were first
13 taken to the DEA office?

14 A. Yes.

15 Q. Is that correct?

16 A. Yes.

17 Q. All right. Now, you were asked to sign a waiver. What
18 conversation was had between you and any other persons
19 that the DEA office immediately prior to your signing
20 that waiver?

21 A. Well, as I said, that I had talked to them and they
22 explained the fact that it could be prosecuted either
23 way, prosecuted in state court would be life, you know,
24 and in addition to that, they mentioned the fact about
25 the bail, to verify the fact that the bail wouldn't be

D. Stewart, for Defts., Direct.

1 one that I couldn't meet, that I wouldn't be out the
2 next day. They brought Mr. Teresi in to verify this
3 fact and he said that I would definitely be out the next
4 day and not only that, they gave my wife assurances,
5 you know, at that time that I definitely would be.

6 Q. Well now, was your wife present at this time, talking
7 about prior to the waiver being signed?

8 A. Yes. Well, that waiver wasn't signed until they actually,
9 you know, like gained that I would cooperate from me
10 and then the waiver was signed.

11 Q. In other words, did you before you signed the waiver
12 begin to discuss with them the subjects which are
13 contained in Government Exhibit 2? That is, the statement
14 you signed later?

15 A. No. I don't think I went into any detail to that effect
16 but immediately after, you know, after they had said --

17 THE COURT: This is Mr. Burns and Mr. Petersen
18 talking to you all this time?

19 THE WITNESS: No, this is Mr. Petersen now. At
20 that time Mr. Burns, if I am not mistaken,
21 hadn't got there yet or wasn't there at
22 that particular time. I was talking to
23 Mr. Petersen and another agent that
24 processed me, took my name and age and
25 address and vital, you know, information.

D. Stewart, for Defts., Direct.

1 to that effect and as I said, he
2 explained to me during this time, this
3 was before the waiver was signed. They
4 brought my wife down there at that
5 particular time and they had talked to
6 my wife in addition to me and they
7 assured my wife guaranteeing my wife as
8 well as me --

9 MR. WILLIAMS: I will object to this unless he
10 knows.

11 THE COURT: Were you there when the conversation
12 was had with your wife?

13 THE WITNESS: Yes. I was there and my wife was
14 there too.

15
16 BY MR. BITTNER:

17 Q. Your wife was at your side during the interview with
18 these agents?

19 A. Yes.

20 Q. Is that correct?

21 A. Yes, she was.

22 Q. All right, and were representations made to you regarding
23 the statements that you gave to the officers? Did they
24 tell you whether or not they were going to be used
25 against you?

D. Stewart, for Defts., Direct.

1 A. Well, they said, - they asked me would I cooperate in
2 terms of testifying against Mr. Castle.

3 Q. All right, and did they tell you that the statements
4 would be used against you?

5 A. No. They told me the statements would be used in terms
6 of my testimony against Mr. Castle.

7 Q. And was it on that basis that you gave the statement?

8 A. Yes, it was.

9 MR. WILLIAMS: This is his witness. He is grossly
10 leading his own witness.

11 THE COURT: All right. Let the witness testify.
12 Mr. Bittner.

13
14 BY MR. BITTNER:

15 Q. All right. Did this statement regarding use of your
16 statement, did that come after your wife was present or
17 before?

18 A. That was during the time my wife was present, if I am
19 not mistaken.

20 Q. All right, and representations were made to you as to
21 what use the statement would be put?

22 A. Yes. They explained, you know, they asked me would I
23 cooperate.

24 THE COURT: Who said that, Mr. Burns or Mr.
25 Petersen?

D. Stewart, for Defts., Direct.

1 THE WITNESS:

2 If I am not mistaken, Mr. Petersen.
3 Well, there was another agent involved
4 too. I don't know his name, as I said
5 before. The only thing I can do is
6 describe the agent. I don't know his
7 name.

8 BY MR. BITTNER:

9 Q All right. Now, where did these conversations take
10 place? Was that in the same conference room where you
11 and Castle had been originally or some other place?

12 A. It was in the conference room. The room was kind of
13 large and they had me over on this side with two agents
14 and they had Mr. Castle over on that side with two
15 agents at the time.

16 Q All right, and did the entire interview take place in
17 that room?

18 A. Yes, it did.

19 Q All right. During the interview you made certain
20 statements?

21 A. Yes.

22 Q To them orally?

23 A. Yes.

24 Q Were they being written down at that time or not?

25 A. I can't quite remember. What I remember is that at that

D. Stewart, for Defts., Direct.

1 given time there was an officer, an agent who had been
2 in conference with the two officers who was interrogating
3 Mr. Castle and he in turn would ask certain questions
4 concerning certain things about the whole case, you know,
5 where did the drugs come from or when did you go back
6 and forth to Washington or whatever, and he never asked
7 me where they came from. He used the word "Washington"
8 first and you know, and I assumed at that time, - and
9 he also made a statement that Mr. Castle was giving a
10 statement at that moment, you know, concerning the whole
11 situation, whatever it was.

12 Q. All right, so your statement was given in response to
13 a request for information regarding Mr. Castle?

14 A. Yes.

15 Q. Is that your testimony? Would you have given that
16 statement had you been aware that it was going to be
17 used against you?

18 A. No, I would not.

19 Q. Did they tell you that it was going to be used against
20 you?

21 A. No, they did not tell me that other than the fact that
22 in the waiver it stated, you know, it said that it
23 could be used against you, but when I gave the statement
24 I was under the impression this statement was taken
25 from me on the strength of my possible testifying

D. Stewart, for Defts., Direct.

1 against Mr. Castle concerning this whole situation.

2 Q. All right. Were there any other requests made of you
3 at that time?

4 A. Requests concerning additional information or anything?

5 Q. Regarding possible actions in the future or --

6 A. No.

7 Q. Or other things to do for them?

8 A. No. At that given time, you know, all they had stated
9 at that particular time was cooperation, you know, and
10 the fact, you know, to testify where Mr. Castle was
11 concerned.

12 Q. All right, and you agreed to do that?

13 A. Yes.

14 Q. All right, and you provided the statement which is
15 contained in Government Exhibit 2?

16 A. Yes.

17 Q. And you signed that statement?

18 A. Yes.

19 MR. BITTNER: Nothing further, your Honor.

20 THE COURT: We will take a brief recess and be
21 back in a few minutes.

22
23 (Recess taken at 3:31 p.m.)
24

25 * * * * *

Tape 4

D. Stewart, for Defts., Cross.

64

1 PROCEEDINGS: After recess, 3:48 p.m.

2 APPEARANCES: As before noted.

3 (Defendants present.)

4
5 THE COURT: Mr. Stewart, will you take the
6 stand, please.
7

8 D O U G L A S S T E W A R T, one of the defendants herein,
9 having been previously duly sworn as a witness in his own
10 behalf, resumed the witness stand and testified further as
11 follows:
12

13 CROSS EXAMINATION BY MR. WILLIAMS:

14 Q Mr. Stewart, you testified that on July 31st of 1975
15 you were arrested with Steven Castle in a vehicle out
16 near Delaware and - -

17 A Delaware and Hertel.

18 Q Then you were taken to his apartment?

19 A Yes.

20 Q All right, and you had been in the apartment previous
21 to that time, on the same day?

22 A Yes.

23 Q Okay, and when you were in the apartment previously
24 you were cutting and packaging heroin?

25 A No. I went to the apartment with Mr. Castle, you know,

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 as I said before, and during, you know, during the
2 course of the time I was in there, you know, we were
3 involved in some heroin involvement but there was no
4 cutting and packaging of heroin because it wasn't that
5 situation with him and me. He was going to drop me
6 off.

7 Q But you had been to his apartment on many prior
8 occasions, hadn't you, before July 31st?

9 A Let me explain something to you before we go any
10 further. Mr. Castle had been my landlord and the
11 connection there between me and Mr. Castle had been
12 a long standing situation.

13 Q You mean out on Koons Avenue?

14 A Yes.

15 Q Okay.

16 MR. BITTNER: Your Honor, I object to any
17 inquiry prior to the 31st of July.

18 THE COURT: Overruled.

19
20 BY MR. WILLIAMS:

21 Q All right. In any event, you had been to Mr. Castle's
22 apartment on many occasions before July 31 of '75, right?

23 A Yes, I had been to his apartment.

24 Q Okay. Now, do you know whether or not, do you remember
25 whether or not during July of 1975 going with Douglas

1 Castle down to Washington?

2 MR. BITTNER: Your Honor, I will object to that
3 question.

4 THE COURT: Overrule the objection.

5 MR. BITTNER: Your Honor, I don't believe it
6 relates to the issue.

7 THE COURT: Wait a minute. We are going to
8 have cross examination and I am going
9 to listen to it. If you want to state
10 an objection say, "Objection". I have
11 overruled it. Go ahead, Mr. Williams.

12
13 BY MR. WILLIAMS:

14 Q Do you remember going down to Washington on two occasions
15 during July with Steven Castle?

16 A Yes, sir, I went to Washington with Steven Castle.

17 Q All right, and on two occasions, right?

18 A Yes.

19 Q Okay, and those two occasions you went to see your
20 brother Robert?

21 A Yes.

22 Q Okay, and those two occasions drugs were purchased,
23 right?

24 A Well, yes, drugs was purchased.

25 Q Okay, heroin?

- 1 A Yes.
- 2 Q Okay, and both of those purchases took place in your
- 3 brother's apartment down in Washington?
- 4 A Yes.
- 5 Q Right?
- 6 A Yes.
- 7 Q Okay, and on those occasions, Steven Castle paid for
- 8 the drugs, correct?
- 9 A Yes.
- 10 Q Okay, and your brother Robert was the one that supplied
- 11 them?
- 12 A No.
- 13 Q An individual by the name of Joe?
- 14 A Yes.
- 15 Q What is his last name?
- 16 A I don't know.
- 17 Q Okay. He gave those drugs to your brother Robert, right?
- 18 A No.
- 19 Q Okay, and then Robert sold them to Steven? Tell us
- 20 what happened down there on those two occasions when
- 21 you and Steve Castle and your brother Robert were
- 22 together in his apartment.
- 23 A Well, in terms of purchasing heroin, he gave them to
- 24 Steven Castle.
- 25 Q Who gave what to Steven Castle?

D. Stewart, for Defts., Cross.

68

1 A The individual, Joe, gave the drugs to Steven Castle.

2 Q Okay, and who set up the deals?

3 A I don't understand what you mean by "set up".

4 Q Well, you contacted your brother Robert in Washington
5 to find out about getting some heroin for Steve Castle,
6 right?

7 A Well, let me explain about the circumstances involved
8 in all that.

9 Q Okay.

10 A It wasn't a situation where I contacted him with any
11 particular, you know, idea of like purchasing heroin
12 from my brother, you know. It was an acquaintance,
13 you know that, - and I don't know to what extent.
14 Somebody my brother had known, you know, that he put
15 me on to, you know, nothing was definite in terms of
16 a transaction at the time that that acquaintance was
17 made.

18 Q Are you talking about his guy Joe, whatever his name is?

19 A Yes.

20 Q Okay. During July, on a couple of occasions, you did
21 call your brother Robert to find out whether or not
22 you could get some heroin, didn't you?

23 A Did I call my brother?

24 Q Yes.

25 A No, no.

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Q You never called your brother up during July of 1975?

2 A I called my brother off and off a number of times, you
3 know, but as far as getting heroin, my brother, you
4 know, he couldn't tell me if I could get heroin at that
5 time because I didn't do, you know, what I bought, I
6 didn't buy from my brother.

7 Q Don't you remember on two occasions during July of '75,
8 making phone calls from Castle's apartment to your
9 brother to find out about whether or not he could get
10 some heroin for you?

11 A Well, actually - -

12 Q Well, "yes" or "no", answer the question.

13 A Can I explain?

14 THE COURT: Let him explain, Mr. Williams.

15 MR. WILLIAMS: Okay.

16 THE WITNESS: I called my brother to have someone
17 contact me because, you know, I didn't
18 know how to get in touch with the person,
19 you know, directly on the phone or what-
20 ever the case may be.

21
22 BY MR. WILLIAMS:

23 Q All right. Did anyone then contact you ?

24 A Yes.

25 Q Who, this guy Joe?

- 1 A Joe.
- 2 Q He contacted you up here in Buffalo?
- 3 A He called Steven Castle.
- 4 Q All right. Then there were two times in July that you
- 5 and Castle went down to Washington, right?
- 6 A Yes.
- 7 Q And you went to your brother Robert's apartment?
- 8 A Yes.
- 9 Q And heroin was purchased there?
- 10 A Well, the heroin was purchased, yes. Steven Castle
- 11 purchased the heroin but, you know, in terms of the
- 12 heroin being purchased, the only person I knew in
- 13 Washington was my brother so, conveniently, I went to
- 14 his spot but it wasn't necessarily a place to purchase
- 15 heroin, no.
- 16 Q Okay, and of the heroin that Steven Castle got, you got
- 17 some of it, didn't you?
- 18 A Yes.
- 19 Q Okay. Now, getting back to July 31st, you said you
- 20 were arrested, you went back to Castle's apartment and
- 21 then you were taken down to the DEA Office that you said
- 22 was downstairs?
- 23 A Yes.
- 24 Q Okay. Now, you said that one of the agents talked to
- 25 you about the difference in penalties between State

1 Court proceedings and Federal Court proceedings?

2 A Yes.

3 Q All right. Now, do you remember about what time that
4 was?

5 A Well, that was just about as soon as we got there, as
6 soon as we got to the office and they start processing
7 us.

8 Q That would have been about 7:00 o'clock or so?

9 A I was under the impression it was later than that.

10 Q All right, 8:00 o'clock.

11 A 7:30, 8:00 o'clock, somewhere around there.

12 Q Okay, all right. You saw the agent here that was on
13 the stand?

14 A Yes.

15 Q And who testified just a short time ago, his name was
16 Joe Burns?

17 A Yes.

18 Q All right. At the time that whom ever talked to you
19 about the difference in penalties between State and
20 Federal Court, Burns wasn't there at that time, was he?

21 A Well, see, this particular statement wasn't made just
22 once. It was made, you know, two or three times and I
23 am actually, you know, pretty sure that at one time,
24 when this statement was made, he was there. In fact,
25 I am sure of the fact he was there when my wife and I

1 was taken, - before Mr. Teresi was brought into the
2 room to assure that I would be out on the street the
3 next day, in fact, the guarantee was.

4 Q Okay, was it Teresi that told you something about you
5 getting low bail?

6 A Yes. You know, he also made the statement that as long
7 as they handle it in Federal Court that they could
8 influence, you know, I would have to give them something
9 definite and this is the result of the statement, you
10 know, to make on something to give the prosecutor,
11 you know, or whatever.

12 Q All right. Now, you got down there about 7:30, you
13 said, or 8:00 o'clock?

14 A In that vicinity.

15 Q Okay. Do you remember what time you left?

16 A From the DEA?

17 Q Yes.

18 A Yes. It was late, somewhere around 10:30, 11:00 o'clock,
19 I imagine.

20 Q Where did you go from the DEA office?

21 A To 10 Delaware.

22 Q And you were there overnight, at least overnight?

23 A Yes.

24 Q Okay. Now, while you were down to the DEA office,
25 were you always in this one big, - what you call a

1 conference room or this one big room?

2 A Other than the time that they took myself and my wife
3 out to talk to Mr. Teresi about, you know, as I said,
4 concerning the bail situation and my cooperation.

5 Q All right, but other than that, you were either, -
6 you were in the room or somewhere else with Teresi?

7 A Yes.

8 Q And you said when Mr. Bittner was examining you, asking
9 you questions, that you had diarrhoea that night?

10 A I said, you know, as I explained like, you know, I
11 had withdrawal and I did have some diarrhoea or whatever.

12 Q You told him you had diarrhoea, right?

13 A Yes, as I explained, but during the course of the day
14 a person pass off a certain amount of waste, you know
15 you just can't pass off no more if there is no more
16 there to pass.

17 Q Wait a minute. You told me that when you were there
18 at the DEA office you had hiarrhoea, didn't you?

19 A Yes. Well, okay. Maybe it is necessary that I explain
20 withdrawal.

21 THE COURT: Let us not be argumentative. I
22 understand. Did you have a stomach ache
23 or did you feel if you had to go to the
24 bathroom?

25 THE WITNESS: Yes. I had nausea.

1 THE COURT: You were distressed?

2 THE WITNESS: And nausea and my bowels, and I
3 had the sweats, and in addition, my eyes
4 was running. In fact, physical signs
5 of withdrawal.

6 THE COURT: All right. Let us get on to something
7 else.

8
9 BY MR. WILLIAMS:

10 Q But you didn't go to the bathroom there, did you?

11 A I went to the bathroom in Mr. Castle's apartment.

12 Q Well, that was earlier.

13 A Yes, that was earlier.

14 Q I show you Government Exhibit Number 1 and in the lower
15 right-hand corner, underneath where it says, "Signature
16 of person waiving rights", is that your signature?

17 A Yes, it is.

18 Q Okay. Now, I don't know if you have been, - you
19 certainly haven't been shown this before in court and
20 what is marked as Government Exhibit Number 2, which
21 is described as a statement which you made. I am sure
22 your attorney has shown you a copy of this.

23 A Yes.

24 Q Okay. If you want to take the time to read it now
25 fully, you can do that or perhaps you have already seen

1 it. If you can answer the question now without looking
2 at it, perhaps you can tell me that statement is the
3 truth as you knew it at that time, isn't it.

4 A Well, I can say that parts of this statement is true
5 as I know it. Some of the parts of the statement, I
6 entered some names and things, as I said before, they
7 told me that if the information I give was sufficient
8 enough that they could give it to the prosecutor and
9 as a result it would be influenced, some of the names
10 and things in there who I never personally had dealings
11 with, you know, some I don't even know, but the state-
12 ment in itself, in effect, some of the things I said,
13 especially in the beginning was given with the thought
14 in mind to make it appear as though what I have said,
15 you know, that the, - to make them act in regards to
16 influencing the situation is concerned.

17 Q The first paragraph here, and I am coming down about
18 the fourth line from the bottom of that paragraph,
19 "Castle then said I could buy drugs", in parenthesis
20 "Heroin from him because he had a contact, Mondo", in
21 quotes, "who I later learned was Bobby Jones". Now,
22 is that correct?

23 A In part, in part in the fact that first of all, the
24 DEA, they had asked me a number of people, did I know,
25 did I know them. They asked me like this, I do know

1 these people, you know.

2 Q Do you know Mondo or Bobby Jones?

3 A I know Mondo, yes, and Castle didn't have this particular
4 contact. He didn't have this contact. This is someone
5 I knew of myself.

6 Q Well, how about the first sentence of the next paragraph,
7 "Castle later told me he was getting his heroin from
8 Heywood Jones and Abraham Prince", is that what Castle
9 told you?

10 A Well, in regards to this statement here, eventually
11 this did happen, as far as Heywood Jones. He never
12 had any contact with Heywood Jones. Heywood Jones had
13 nothing to do with it.

14 Q But that is what Castle told you that that was his
15 contact?

16 A I understand what you are asking but I am explaining
17 what he did tell me was, he was involved with Abraham
18 Prince. He never was involved with Heywood Jones at
19 anytime. These was names they were aware of, you know.

20 Q You mean the DEA was aware of?

21 A Yes, names that he had asked me about previously.

22 Q In other words, other than maybe someone, - some of
23 the names of different drug dealers and drug users
24 this statement is basically correct, yes.

25 A Yes, I would probably have to sit down and take it apart

1 and look at different parts, you know, but I was aware
2 of the fact that I was making a statement in terms of
3 influencing them in my b you know, if that's the
4 way to say it.

5 Q That is what you were hoping for, right?

6 A Yes, which they guaranteed me of at that time.

7 MR. WILLIAMS: I have no more questions.

8 THE COURT: Mr. Bittner, anything else?
9

10 REDIRECT EXAMINATION BY MR. BITTNER:

11 Q Just a few brief ones, your Honor. Mr. Stewart, are
12 you using drugs at this time?

13 A No, I am not.

14 Q You have no drug habit at all?

15 A No.

16 Q You have been detoxified. Are you testifying you were
17 ill at the time when you were being asked to waive your
18 rights?

19 A Yes.

20 Q And at the time when you gave a statement?

21 A Yes.

22 Q Is that correct?

23 A Yes.

24 Q Were any representations made, was any conversation
25 had regarding the holding center?

D. Stewart, for Defts., Re-direct.

78

- 15 1 A Yes. When I explained to them, you know, that I was
2 ill, you know, they said they would take me over to
3 the holding center, 10 Delaware, and I would get
4 medication there.
- 5 Q All right, and do you recall the names of the agents
6 who may have said that or the agent who said that to you?
- 7 A No, I can't recall specifically. I don't recall his
8 name offhand.
- 9 Q All right. Did you receive medication later that
10 evening at all?
- 11 A At the holding center, yes.
- 12 Q Do you know what that medication was?
- 13 A If I'm not mistaken it was Darvon-N.
- 14 Q Okay. Were you addicted to any other drugs besides
15 heroin at the time of the statement of the 31st of July,
16 1975?
- 17 A No.
- 18 Q All right. Mr. Stewart, Government's Exhibit 2, the
19 statement that you signed - -
- 20 A Yes.
- 21 Q That is not a statement of your criminal activities so
22 much, is it?
- 23 A No.
- 24 Q It is a statement concerning what individual, sir?
- 25 A This is a statement concerning Mr. Castle's involvement.

D. Stewart, for Defts., Re-direct.

79

16

In fact - -

1

2

THE COURT:

3

I can read the statement and isn't
it for me to judge? You can argue about
that also, Mr. Bittner.

4

5

MR. BITTNER:

All right. I have nothing further.

6

MR. WILLIAMS:

I have no more.

7

THE COURT:

Mr. Stewart, you heard the testimony
of Mr. Burns?

8

9

THE WITNESS:

Yes.

10

THE COURT:

Do you claim that when he explained, -
first of all he did explain certain
rights to you he read from a card?

11

12

13

THE WITNESS:

Yes, he explained certain rights to
me.

14

15

THE COURT:

All right. Did you understand at
that time what he was saying to you?

16

17

THE WITNESS:

Yes, I understood what he was
saying to me, your Honor, but you know,
like, - like I was trying to explain to
my attorney, one of the things, you know,
the process as far as this whole state-
ment is concerned, is the fact he explained
to me, - first of all it was told to me
that I could be charged with what Mr.
Castle is being charged with in the house

18

19

20

21

22

23

24

25

1 because I left the house within a twenty
2 minute period of time and that, you know,
3 they found a large amount of narcotics
4 in the house which they told me I
5 definitely could be charged with and when
6 we got down to the DEA he explained to me
7 that in addition to the fact that I could
8 be charged, this case could be taken to
9 the State Court and I could be charged
10 with life and not even hit the street
11 rather than 15 years and they said in
12 Federal Court they could handle the
13 situation provided I cooperated and gave
14 them a substantial amount of information.

15 THE COURT:

Did you ask them questions from
16 time to time?

17 THE WITNESS:

Yes. I asked, you know, - well, I
18 asked, you know, what could they actually
19 do where the case is concerned, whatever,
20 and he said I wouldn't have to worry about
21 the case, you know, as long as if I
22 cooperated, and, you know, my wife was
23 there and they gave her the same assurances.
24 They told her I was going to be home the
25 next day because the bail situation would

D. Stewart, for Defts., Re-direct.

81

18

1

be one that they could handle and I

2

wouldn't have to worry about that.

3

THE COURT:

Did you ask them other questions

4

about when he was explaining the rights

5

to you? In other words, he said he

6

paused from time to time and he would

7

say, "Do you understand", and were there

8

any other questions you asked him?

9

THE WITNESS:

No, not to my knowledge, sir. As

10

I explained before, first of all, as

11

far as the agent pausing and asking, did

12

I understand each particular phrase he

13

had read, he didn't do that and I was

14

kind of concerned with the fact that I

15

was ill and, you know, I asked a number

16

of agents what about medication and they

17

said when I get to 10 Delaware then I

18

would get medication for my illness at

19

that particular time.

20

THE COURT:

Was that Agent Burns that you said

21

that to?

22

THE WITNESS:

Not in particular. If I am not

23

mistaken, that was Agent Peterson.

24

THE COURT:

Agent Peterson. He was there at

25

times when Mr. Burns was not there, is

19

1

that what you are saying?

2

THE WITNESS:

3

Yes, sir. See, he actually made the arrest. He was the one that actually arrested me. When we were arrested they had a number of agents assigned. They had one assigned to Mr. Castle because they was under the impression he had a gun and they had an agent assigned to him solely and they also had agents assigned on my side of the car so when they arrested me, Mr. Peterson was the arresting officer, to my understanding, at that time.

4

5

6

7

8

9

10

11

12

13

14

THE COURT:

15

16

17

At that time you told us about the fact that you did not feel right, you felt, - you explained the diarrhoea problem.

18

THE WITNESS:

Yes.

19

THE COURT:

20

Was your nose running at the time or your eyes watering?

21

THE WITNESS:

22

23

24

25

Yes, my eyes were watering in addition to the fact my nose was running and in addition to the fact I remember my hands were handcuffed behind me, behind the chair and I kept going like this to

D. Stewart, for Defts., Re-direct.

83

1 stop the mucus running from my nose.

2 THE COURT: Were you sleeping at the time?

3 THE WITNESS: No, I wasn't sleeping. I was, -

4 it's a matter of withdrawing more. It

5 is not a matter of sleeping. It is hard

6 to explain but I can't recall sleeping.

7 Tired, yes.

8 THE COURT: May I see the statement, please.

9 This is the agent's handwriting?

10 THE WITNESS: Yes. That is not mine. I didn't
11 write that statement.

12 THE COURT: All right. Thank you, Mr. Stewart.

13 Any other evidence, Mr. Bittner? Was

14 any statement taken from the other

15 defendant?

16 MR. WILLIAMS: No.

17 MR. BRIDGE: No, your Honor.

18 THE COURT: You have nothing, Mr. Bridge?

19 MR. BRIDGE: No.

20 THE COURT: Mr. Williams, any other evidence?

21 MR. WILLIAMS: Well, in view of the fact that Mr.

22 Bittner has put his client on the stand

23 and he has made some specific claims that

24 he was physically sick that night, there

25 were at least two other agents that were

1 with him from the time of the arrests,
2 Kenneth Peterson and there was one other.
3 I would like at least to put Mr. Peterson
4 on the stand.

5 THE COURT:

That should be done, I think. Mr.
6 Peterson is not available today?

7 MR. WILLIAMS:

I can find out, your honor. I don't
8 honestly know what the situation is but
9 I could put a phone call down there.

10 THE COURT:

I think it would be better if we
11 took it another day. Mr. Bridge, it
12 seems to me there is no reason for you
13 to be here or to have your client here
14 soon. Before we set a date for trial,
15 is there anything further to be done?

16 MR. BRIDGE:

No, your Honor, I don't have anything.
17 I have had access to all the information
18 that is available and I am satisfied
19 with that.

20 THE COURT:

All right. Why don't I set a date,
21 a tentative date for this case. This
22 would depend upon what comes next but
23 since your client is not from Buffalo,
24 why don't we set jury selection for
25 December 7th. Mr. Stewart, you be in

D. Stewart, for Defts., Re-direct.

85

22

1

touch with Mr. Bridge during the latter part of November so that you will know whether or not there is any change in the plans.

2

3

4

5

MR. BRIDGE:

Your Honor, I don't know what I have. I have something scheduled for that day in Supreme Court. Is it possible to make it, - that is Pearl Harbor Day and I know I have something, not because of the date being Pearl Harbor Day, but I do have something else.

6

7

8

9

10

11

12

THE COURT:

Let us make it November 30th then. I do not say we will start the trial exactly that day.

13

14

15

MR. BRIDGE:

All right.

16

THE COURT:

It depends on what else we are doing but we will pick a jury and go to trial when everyone is ready.

17

18

19

MR. BRIDGE:

All right.

20

THE COURT:

And in the meantime, can you wait for a minute and I will get Mr. White and find out when we have some time. All right. Next Friday morning, the 12th at 9:00.

21

22

23

24

25

MR. WILLIAMS:

Fine with me.

23

1 THE COURT: Will you have Mr. Peterson and
2 the other agent here?
3 MR. WILLIAMS: Yes.
4 THE COURT: Your client talked about his
5 physical condition.
6 MR. BITTNER: Yes.
7 THE COURT: That is what we are concerned about
8 then.
9 MR. BITTNER: Right. Your Honor, as long as we
10 are coming back, rather than permitting
11 Mr. Williams to start rebuttal right
12 away, I would like the opportunity to
13 bring Mrs. Stewart in. She was present
14 also and I think she can corroborate
15 his testimony.
16 THE COURT: It is up to you.
17 MR. BITTNER: I would like that opportunity.
18 THE COURT: Thank you, Mr. Bittner. It would
19 be a good idea, - you are Douglas or
20 Robert?
21 THE DEFENDANT DOUGLAS STEWART: I am Douglas.
22 THE COURT: Douglas, you should be here next
23 Friday. Robert, you do not have to be
24 here unless you want to be. You can be
25 if you want to. All right. We will be

D. Stewart, for Defts., Re-direct.

24

1

in recess.

2

3

(Recess taken at 4:21 p.m.)

4

5

* * * * *

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

25

1

PROCEEDINGS: November 24, 1976, 10:15 a.m.

2

APPEARANCES: RICHARD J. ARCARA, United States Attorney,
by ROGER P. WILLIAMS, Assistant United
States Attorney.

3

4

GARY S. BITTNER, Esq., Attorney for the
Defendant DOUGLAS STEWART.

5

(Defendant Douglas Stewart present.)

6

7

THE COURT:

We are here this morning to continue
the hearing of the United States against
Douglas Stewart and Robert Stewart,
Criminal Number 1976-87. Mr. Bittner
is here with his client. Is this Douglas?

10

11

12

MR. BITTNER:

This is Douglas, your Honor.

13

THE COURT:

Douglas Stewart. Robert Stewart and
his lawyer Charles Bridge have indicated
to the Court they do not desire to be
present and are not here. We are ready
for witnesses?

14

15

16

17

18

MR. BITTNER:

Yes, your Honor.

19

THE COURT:

Do you want to proceed?

20

MR. BITTNER:

Your Honor, I ask at this time to
be permitted to recall Douglas Stewart
to clarify a mistaken impression made
at the last hearing.

21

22

23

24

THE COURT:

All right.

25

26

1 DOUGLAS STEWART, one of the defendants herein,
2 having been previously duly sworn as a witness in his own
3 behalf, resumed the witness stand and testified further as
4 follows:

5

6 REDIRECT EXAMINATION BY MR. BITTNER:

7 Q Mr. Stewart, you understand you are still under oath?

8 A Yes.

9 Q Do you recall testifying in this hearing previously
10 that on your being taken to the holding center after
11 you were interrogated downstairs in this building, that
12 you asked for and received Darvon?

13 A Yes.

14 Q Do you recall that testimony?

15 A Yes.

16 Q To the best of your recollection is that an accurate
17 description of what happened?

18 A No. It was the time factor involved I was like, you
19 know, it happened to me over a period of time and what
20 happened was, I was taken over there at 11:00 o'clock
21 and I asked at that time to see the doctor, you know.
22 they put it in the book and everything and they asked
23 me what was my problem and I told them, an addict, -
24 whatever, and the doctor leaves by 5:00 o'clock and I
25 wasn't able to see the doctor and I didn't get Darvon.

O. Stewart, for Defts., Direct.

90

27

1 Q In other words, you didn't get Darvon, but was there
2 a nurse on duty when you arrived, to the best of your
3 recollection?

4 A No, no nurse was on. It was after 11:00 o'clock, I
5 think.

6 Q Have you confused this incident with another time?

7 A Yes.

8 Q When you were at the holding center?

9 A Yes, I have.

10 Q Your testimony concerning your physical symptoms at the
11 time of the interrogation, that is accurate?

12 A Yes, it is very accurate.

13 MR. BITTNER: All right.

14 MR. WILLIAMS: No questions.

15

16

* * * * *

17

18 O R V E T T A S T E W A R T (312 Koons Avenue, Buffalo,
19 New York), a witness called by and in behalf of the defendant,
20 having been first duly sworn, was examined and testified as
21 follows:

22

23 DIRECT EXAMINATION BY MR. BITTNER:

24 Q Mrs. Stewart, can you keep your voice up so that the
25 Judge and Mr. Knisley can hear you. Are you the wife

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 of Douglas Stewart, the defendant in this action?

2 A Yes.

3 Q All right, and you were married to him in July of last
4 year?

5 A No, three years ago.

6 Q Okay. Were you present in the offices of the Drug
7 Enforcement Administration on the 31st of July, 1975?

8 A Yes.

9 Q All right. Were you present there with your husband?

10 A Yes.

11 Q And what time of day would that have been?

12 A Somewhere around in the evening.

13 Q All right. What was the occasion for your being present
14 there, Mrs. Stewart?

15 A They asked me to come down to answer some questions.

16 Q Had agents been to your house?

17 A Yes.

18 Q And conducted a search?

19 A Yes.

20 Q Were you under arrest at that time?

21 A No.

22 Q All right. Were you present when your husband was
23 interrogated, talked to, questioned?

24 A Yes.

25 Q In the DEA offices?

29

1 A Yes.

2 Q All right. Would you tell the Court, please, what you
3 recall regarding the interrogation, what Mr. Stewart
4 was told by the agents and what he said in response?

5 A We were told that if we cooperated with them that they
6 would make things a lot easier if the case was coming
7 up, they would get the case squashed and my husband
8 would be released on bail but after awhile, they had
9 changed it until the next day, he said that he would
10 be released if we cooperated with them.

11 Q All right. Mrs. Stewart, were the questions asked by
12 the agents from the DEA directed toward your husband's
13 involvement in criminal activities or were they directed
14 toward some other crimes, and if so, by whom?

15 A By Mr. Teresi.

16 Q Mr. Teresi was asking the questions, is that right?

17 A Yes.

18 Q Did he want to know about what your husband had done
19 or was he interested in what other people had done
20 which your husband may have witnessed.

21 A He wanted to know what my husband had done.

22 Q All right. Was he interested specifically in some
23 people from Washington?

24 A Yes.

25 Q All right, and did he ask Mr. Stewart, your husband,

30

- 1 about those people?
- 2 A Yes.
- 3 Q All right, and who else was present with Mr. Teresi
- 4 from the DEA?
- 5 A A Mr. John, - I can't think of his name.
- 6 Q Can you describe the individual?
- 7 A Yes. He had a handle-bar mustache and sort of lightish
- 8 red hair and he was a bigger guy, sort of big, and he
- 9 was white.
- 10 Q A white man. Who else was present, do you recall?
- 11 A There was another man present. I can't recall his name
- 12 now.
- 13 Q Can you describe him?
- 14 A Yes. He had brown hair and he was younger than the
- 15 other one with the red hair.
- 16 Q Were there more than three officers present?
- 17 A No.
- 18 Q And were these three officers present continuously
- 19 throughout the time when you were there in the offices
- 20 of the DEA?
- 21 A Not continuously. Two weren't there but most of the
- 22 time the three of them was there.
- 23 Q All right. Were any oral statements made to your
- 24 husband and to you concerning whether any statements
- 25 you made would be used against you and your husband?

31

- 1 A Yes.
- 2 Q Can you tell the Court, please, who made these state-
3 ments, if you recall and what the substance of the
4 statements were?
- 5 A Mr. Teresi made the statement that nothing we said
6 would be used against us. He said nothing we said
7 would be used against us.
- 8 Q All right. Did he tell you what he was interested in
9 and what he wanted to use the statement for?
- 10 A Yes. He said he was interested in the guy in Washington,
11 Joe and Steve Castle.
- 12 Q Was other information sought regarding heroin trafficking
13 in the Buffalo?
- 14 A I beg your pardon.
- 15 Q Did anyone from the DEA on that day, ask for other
16 information regarding heroin sale and distribution in
17 Buffalo?
- 18 A Yes.
- 19 Q All right, and other individual's names were sought,
20 is that correct?
- 21 A Yes.
- 22 Q Do you recall any of the other names your husband may
23 have given at that time?
- 24 A No, I can't recall the names. We gave information, -
25 he gave them information, a couple of people in Buffalo

32

1 but I can't recall their names because they were known
2 by my husband.

3 Q Mrs. Stewart, did you give a statement at that time?

4 A Yes.

5 Q All right. Did you sign something to your recollection?

6 A Not to my recollection, no.

7 Q All right. Did you have an opportunity to observe
8 your husband's physical condition at that time?

9 A Yes.

10 Q And at that time, Mrs. Stewart, did you know him to
11 be an addict?

12 A Yes.

13 Q And do you know what he was addicted to at the time?

14 A Yes.

15 Q Would you tell the Court, please?

16 A He was addicted to heroin.

17 Q All right, and would you describe, please, his physical
18 condition during the course of the interview at which
19 you were present?

20 A He was going through withdrawal. He was sick. He was
21 shivering and cold and his nose was running and his
22 eyes was running.

23 MR. BITTNER: All right. I have nothing further,
24 your Honor.

25

33

1 CROSS EXAMINATION BY MR. WILLIAMS:

2 Q Mrs. Stewart, do you recall what time on the evening
3 of July 31 you got to the Drug Enforcement Office in
4 this building?

5 A It was somewhere around, let's say somewhere around
6 6:00 or 6:30. I am not really sure.

7 Q All right. Then there was a period of time when
8 different individuals or different agents were talking
9 to both you and your husband, right?

10 A Yes.

11 Q And that took place over a period of some time?

12 A Yes.

13 Q When do you claim that Mr. Teresi told your husband
14 that whatever he said or whatever you said would not
15 be used against you? When you first got there, during
16 the middle or at the end when you were about to leave?

17 A Oh, it was somewhere around the beginning because they
18 were asking us about Washington because they told us
19 that nothing we said would be used against us and so it
20 was around the beginning.

21 Q Didn't your husband tell you that he had shot up late
22 in the afternoon of the 31st?

23 A No, not that I can recall.

24 MR. WILLIAMS: I have no more questions.

25 MR. BITTNER: I have nothing, your Honor.

1 THE COURT: Anything further, Mr. Bittner?
2 MR. BITTNER: No, your Honor. We rest.
3 THE COURT: Mr. Williams, you have some rebuttal?
4 MR. WILLIAMS: One agent I wish to call for limited
5 rebuttal.
6 THE COURT: All right. Thank you, Mrs. Stewart.

7
8 * * * * *

9
10 KENNETH B. PETERSON (Buffalo, New York), a
11 witness called by and in behalf of the Government in rebuttal,
12 having been first duly sworn, was examined and testified as
13 follows:

14
15 DIRECT EXAMINATION BY MR. WILLIAMS:

16 Q Mr. Peterson, you are a Drug Enforcement Administration
17 Agent, are you not?

18 A Yes, sir, I am.

19 Q And you have been for some time?

20 A Since April of 1971.

21 Q All right, sir. Directing your attention to July 31 of
22 1975, did you have occasion at any time on that day to
23 be in the vicinity of Hertel Avenue near Delaware in
24 the City of Buffalo?

25 A Yes, sir, I did.

K. B. Peterson, for Government in Rebuttal, Direct.

98

35

1 Q And did you have occasion to arrest an individual by
2 the name of Douglas Stewart?

3 A Yes, sir, I did.

4 Q And about what time was that?

5 A To the best of my recollection it was late afternoon,
6 5:00 or 5:30 p.m.

7 Q And where was that?

8 A Right near the corner of Delaware and Hertel on Hertel
9 Avenue facing east.

10 Q All right. Did you see him at anytime prior to that
11 occasion when you arrested him?

12 A Yes, sir, I did.

13 Q When was the first time on that day?

14 A To the best of my recollection it was earlier in the
15 afternoon on a surveillance that was being conducted
16 in downtown Buffalo.

17 Q Now, did you see that individual again at your office
18 in this building sometime after 5:30 on the 31st of July?

19 A Yes, sir, I did.

20 Q And did you have occasion to transport him down to the
21 office?

22 A I can't recall if I had transported him, but I saw him
23 once I arrived at the office.

24 Q And can you tell us about what time it was that you saw
25 him at the office?

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

36

K. B. Peterson, for Government in Rebuttal, Direct. 99

- 1 A To the best of my recollection, it was maybe around
2 8:30 or 9:00 or somewhere around 8:30 or 9:00 that evening.
- 3 Q Did you have any conversation with him?
- 4 A Yes, sir, I did.
- 5 Q Now, did there come a time when he was taken to the
6 Erie County Holding Center?
- 7 A Yes, sir.
- 8 Q And about what time was that?
- 9 A I don't know the exact time but to the best of my
10 recollection it might have been around 11:00 o'clock,
11 a couple of hours after after arriving at our office.
- 12 Q P.M.?
- 13 A 11:00 p.m., yes.
- 14 Q All right. You say you arrived at the office or he
15 arrived somewhere around 8:30 or 9:00?
- 16 A To the best of my recollection, yes, sir.
- 17 Q Now, during the period of time that he was in the office,
18 did you have an occasion to physically observe him?
- 19 A Yes, sir, I did.
- 20 Q And what, if anything, did you observe about Mr. Stewart?
- 21 A I observed Mr. Stewart was giving a statement to me and
22 other agents and during the course of the statement,
23 Mr. Stewart seemed normal. At certain times I asked
24 him about his medical health and he indicated that he
25 was normal.

37

K. B. Peterson, for Government in Rebuttal, Direct.

100

1 Q Did there ever come a time when he requested medication?

2 A No, sir, not that I am aware of. Not to me.

3 Q Did you ever have any conversations with him regarding
4 his drug habits?

5 A Yes, sir, I did.

6 Q Okay. What, if anything, did he say about that with
7 respect to the activities of July 31?

8 A I asked Mr. Stewart upon arriving at the Buffalo District
9 Office if he was going to get ill in any way, if he was
10 using drugs, if he was addicted to drugs and on both
11 questions, use and addicted to drugs, he did say that
12 he did use drugs, maybe considered an addict and he was
13 not going to get sick. I was very concerned about the
14 fact, after he stated he used drugs, that in fact he
15 may have needed some sort of medication so I asked him
16 on numerous occasions and he stated that he was not
17 going to get sick and the reason I remember it was
18 because he stated that just prior to his arrest, around
19 5:30 or so, he had just shot some drugs in Castle's
20 apartment that he had just cut up.

21 Q That was at Castle's apartment?

22 A Yes.

23 Q On Hertel Avenue?

24 A Yes, sir.

25 Q Now, at anytime, did you ever observe him perspiring or

38

K. B. Peterson, for Government in Rebuttal, Cross. 101

1 sweating in any way?

2 A No, sir.

3 Q Did you ever observe whether or not his nose was running?

4 A I don't recall his nose running at all.

5 Q At anytime that you were with him, did he ever request
6 permission to use the lavatory facilities?

7 A I can't recall, sir. I did ask him if he was going to
8 get sick, on more than one occasion or if he required
9 any medical attention and both questions he answered
10 that he did not and he was not going to get sick.

11 MR. WILLIAMS: All right. I have no more questions.

12

13 CROSS EXAMINATION BY MR. BITTNER:

14 Q Agent Peterson, when did you first question the
15 defendant Stewart, regarding whether he was an addict
16 or not? Was that at the time of the arrest or was that
17 sometime later?

18 A It was sometime later after we arrived at the Buffalo
19 District Office.

20 Q All right. Would it have been nearer to the time when
21 you arrived or would it have been nearer to the time
22 when he ultimately left the office that night, - when
23 you first questioned him?

24 A When I first questioned him, one of my first questions
25 was, "Do you use drugs, are you addicted and if so,

1 will you need any sort of medication".

2 Q So it would be early on in the interrogation, is that
3 correct?

4 A Yes, sir.

5 Q That you asked him about his physical condition?

6 A Yes, sir.

7 Q And what was his response to your initial inquiry?

8 A My initial inquiry was as to him getting sick and he
9 stated he was not going to.

10 Q Did he tell you at that time that he had shot up earlier
11 or late in the afternoon, prior to being arrested?

12 A I don't recall if he told me the exact time but he said
13 that he was using drugs and he was not going to get sick.

14 Q All right, and he did not appear ill at the time when
15 you asked him whether he used drugs?

16 A No, sir.

17 Q You stated he appeared normal?

18 A Yes, sir.

19 Q And throughout the interview he appeared normal?

20 A To the best of my recollection, yes, sir.

21 Q All right. Nevertheless, Agent Peterson, you asked him
22 on numerous occasions throughout the interview?

23 A I think I used the word "numerous". I don't know how
24 many times. I asked him more than once but he did say
25 he was a drug user so I asked him on more than one occasion.

40

1 Q Despite his appearing normal and despite his statement
2 that he had just shot up?

3 A Yes, sir.

4 MR. BITTNER: I have nothing further.

5 MR. WILLIAMS: Nothing else.

6 THE COURT: Any other witness, Mr. Williams?

7 MR. WILLIAMS: No, your Honor.

8 THE COURT: Mr. Bittner, anything else?

9 MR. BITTNER: No, your Honor.

10 THE COURT: What should we do now?

11 MR. WILLIAMS: Well, I suppose there has to be a
12 determination as to the admissibility of
13 the statement that Douglas Stewart gave
14 on the evening of July 31, 1975.

15 THE COURT: I see. Mr. Bittner, in what manner
16 do you want to be heard? Do you want
17 to be heard orally or do you want to file
18 a written brief in support of your motion
19 or what should we do?

20 MR. BITTNER: Your Honor, I would prefer an
21 opportunity to review the testimony and
22 to summarize it for the Court in written
23 form.

24 THE COURT: I will permit that to be done. Mr.
25 Knisley, would you prepare transcript,

41

1

please, of this hearing and the prior
testimony we have had in this matter.

2

3

Do you have the dates?

4

THE CLERK:

November the 5th, your Honor.

5

THE COURT:

Was there only one prior occasion
or two?

6

7

MR. WILLIAMS:

I have November the 4th, Judge, I
think was the only prior hearing date.
Yes, November the 5th, Judge, I think was
the only prior hearing.

8

9

10

11

THE COURT:

All right, November the 5th at 2:00
and then it was adjourned several times
and then we are here today. After I
receive transcript, I will set a schedule
for briefing.

12

13

14

15

16

MR. BITTNER:

Your Honor, at this time I think
tentatively, we have a November 30th date
for selection of a jury. That is my
recollection at the terminus of the first
hearing.

17

18

19

20

21

THE COURT:

It appears to me, and Mr. White,
make a note for the docket, please, that
it is in the public interest that this
motion be considered carefully; that
defendant have an opportunity to present

22

23

24

25

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 a written argument on the transcript and
2 that I will adjourn the trial of this
3 case until that can be done and this
4 motion can be made. At the time I
5 decide the motion, I will also set a
6 date for trial.

7 MR. BITTNER:

Thank you, your Honor.

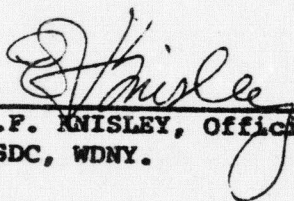
8 MR. WILLIAMS:

Very good. Thank you, Judge.

9
10 (Suppression hearing herein concluded.)
11

12 * * * * *

13
14 I certify that the foregoing is a complete
15 and accurate transcription of my shorthand
16 notes taken herein.

17 
18 E.F. KNISLEY, Official Reporter,
19 USDC, WDNY.
20
21
22
23
24
25

AFFIDAVIT OF SERVICE BY MAIL

USA vs. Douglas Stewart
77-1387

State of New York)
County of Genesee) ss.:
City of Batavia)

I, Leslie R. Johnson being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 12th day of December, 1977
I mailed copies of a printed Appendix in
the above case, in a sealed, postpaid wrapper, to:

10 Copies Air Mail to A. Daniel Fusaro, Clerk
U. S. Court of Appeals-2nd Circuit
New Federal Court House
Foley Square
New York, NY 10007

2 Copies to Gary S. Bittner Esq.
2400 Main Place Tower
Buffalo, NY 14202

at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

Richard A. Arcara Esq., U. S. Attorney, 502 US

Courthouse, Buffalo, NY 14202 Att: James A. Frank,
Asst. U. S. Attorney

Leslie R. Johnson

Sworn to before me this

12th day of December, 1977

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1979